

United States
Circuit Court of Appeals

For the Ninth Circuit.

Apostles on Appeal.
(IN TWO VOLUMES.)

FIREMAN'S FUND INSURANCE COMPANY, a
Corporation,

Appellant,

vs.

THE GLOBE NAVIGATION COMPANY, a Corpora-
tion, and S. P. WESTON, as Trustee in Bank-
ruptcy of the GLOBE NAVIGATION COM-
PANY, a Corporation, Bankrupt,

Appellees.

VOLUME I.
(Pages 1 to 320, Inclusive.)

Upon Appeal from the United States District Court for
the Western District of Washington, Northern Division.

Filed

AUG 26 1915

F. D. Monckton,

Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Libelant.

S. P. WESTON (Trustee in Bankruptcy of GLOBE
NAVIGATION COMPANY, a Bankrupt).

Substituted Libelant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Respondent.

Names and Addresses of Counsel.

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1107 Merchants Exchange Building, San
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1107 Merchants Exchange Building, San
Francisco, California.

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1107 Merchants Exchange Building, San
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901 Alaska Building, Seattle, Washington.

2 *Fireman's Fund Insurance Company vs.*

ALFRED BATTLE, Esq., Proctor for Respondent,
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R. A. HULBERT, Esq., Proctor for Respondent,
901 Alaska Building, Seattle, Washington.

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ington. [2]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Libelant.

S. P. WESTON (Trustee in Bankruptcy of GLOBE
NAVIGATION COMPANY, a Bankrupt),
Substituted Libelant.

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Respondent.

*Page-number appearing at foot of page of original certified Apostles
on Appeal.

Statement.

Time of commencement of suit: May 13, 1912.

Names of parties: The Globe Navigation Company, a corporation, libelant.

S. P. Weston (Trustee in Bankruptcy of Globe Navigation Company, a bankrupt), substituted libelant.

Fireman's Fund Insurance Company, a corporation, respondent.

Dates when pleadings were filed: Complaint, May 13, 1912. Answer to Complaint, June 13, 1912. Amended Complaint, March 10, 1914. Answer to Amended Complaint, March 31, 1914. Reply, April 13, 1914.

Issuance of process and service thereon: On May 13, 1912, Summons was issued against Fireman's Fund Insurance Company, a corporation, and same was delivered to Marshal for service. On the 14th day of May, 1912, Marshal returned the same into the Clerk's office with return indorsed thereon showing service upon the General Agent of above-named Respondent. [3]

Reference to Commissioner: Cause was referred to Commissioner A. C. Bowman to take and report the testimony, and on November 2, 1914, said Commissioner duly returned into the Clerk's office his transcript of the testimony so taken, together with the exhibits offered in evidence before said Commissioner.

Time of trial: This cause was submitted to the Honorable Jeremiah Neterer, Judge of the District

schooner "Wm. Nottingham" hereinafter referred to. That it is duly authorized to do business in the State of Washington, and has paid its annual license fee as such corporation last due to the State of Washington.

II.

That the Fireman's Fund Insurance Company is a corporation organized and doing business under the laws of the State of California, and duly authorized to do business in the State of Washington, and maintaining an office in said State for the transaction of its business.

III.

That on the 17th day of April, 1911, the defendant made to plaintiff a policy of insurance, a copy of which is hereto annexed, for the sum of Six Thousand Dollars, on the schooner "Wm. Nottingham" against the perils of the sea and other perils [5] therein mentioned, during the time in said policy set forth, which is hereto annexed marked Exhibit "C."

IV.

That on or about the 2d day of October, 1911, said schooner sailed from Westport, on the Columbia River, for Calloa, Peru, carrying a cargo of lumber, and while engaged on said voyage, and on October 8th, 1911, said schooner encountered a terrific wind, which tore away one of the two life-boats, flooded the donkey-room and put out the fire under the donkey-boiler. Said gale continuing, early on the morning of the 9th of October the deck lashings parted and released the deck-load, a part of which went

overboard, and carried with it the first or mainmast, then the mizzenmast and last the spankermast. The connections between the donkey-boiler and the water-tank were broken and all fresh water was lost, and the schooner became completely filled with water. Through the efforts of the master and crew the vessel was nearly cleared of water, when another heavy gale came up, accompanied by high seas, which caused her to again fill rapidly. These conditions continued until the 13th, when the schooner, being water-logged and being practically unmanageable, there was great danger of her breaking up and being driven ashore, so that the officers and crew, for the safety of their lives, were compelled to leave and abandon her and seek safety in finding their way to the shore, and the said schooner being thereupon abandoned by her officers and crew, became a derelict, having lost, in addition to the three masts, all gaffs, beams, blocks, sails and running and standing rigging, and all iron work, and being otherwise damaged.

V.

That at about twelve o'clock noon on October 1, 1911, the steam tug "Wallula," owned and operated by the Port of Portland, Oregon, found said schooner "Nottingham," a derelict and abandoned by her officers and crew, off the mouth of the Columbia River, [6] and took her in tow and brought her to the port of Astoria, Oregon.

VI.

That on October 16, 1911, The Globe Navigation Company, the plaintiff herein, gave to the Fireman's Fund Insurance Company a notice of its abandon-

ment of said vessel to said Insurance Company, said notice being in writing, a copy of which is hereto-attached marked Exhibit "B" and made a part of this complaint.

VII.

That from and after the 15th day of October, 1911, the officers and crew of said tug "Wallula" remained in possession of said schooner "Wm. Nottingham," and at all times refusing to deliver possession of said schooner until about the 6th day of November, 1911, in an action entitled "In the District Court of the United States for the District of Oregon," wherein the Port of Portland, a municipal corporation, and E. D. Parsons and others as master and crew of said tug "Wallula," were libelants, and directed against said schooner "Wm. Nottingham," her tackle, apparel, furniture, etc., such proceedings were had that the United States Marshal thereupon entered into possession of said schooner, etc., upon a claim made by said libellants for salvage for a large sum of money, alleging said schooner to be of the value of thirty thousand dollars and her cargo still laden on board to be of the value of four thousand dollars.

VIII.

That by an order of said District Court, dated November 27, 1911, said Marshal was directed to remove said schooner from Astoria, Oregon, to St. Johns, Oregon, it appearing that the cargo still on board said schooner could not be discharged and safely stored at said Astoria, Oregon, and there was no dry-dock at said Astoria, Oregon, and that in order that the cargo might [7] be discharged and

safely stored and said vessel drydocked it was necessary to cause said removal, which was accordingly done by said marshal.

IX.

That is was thereafter mutually agreed between the parties in interest, including the parties to this action, that said schooner should be relieved of the salvage claims of said libellants, together with the expenses incurred in said proceedings, and on or about the 8th day of February, 1912, the following sums of money were paid for the following purposes, to deliver said vessel from the possession of the United States Marshal, to wit:

Paid Port of Portland for salvage claims of libellants.....	\$3,000.00
Paid Port of Portland account towage from Astoria to Portland.....	150.00
Paid Port of Portland, dockage schooner..	79.32
Paid Port of Portland, berth at dry-dock wharf.....	98.00
Paid Port of Portland, storage of lumber.	638.79
Paid Brown & McCabe, stevedores, dis- charging lumber laden on board.....	1,245.50
Paid Port of Portland for longshoremen, etc., at Astoria harbor.....	80.00
Paid Port of Portland, account watchman.	181.00
Paid Port of Portland, miscellaneous charges.....	66.90
Paid U. S. Marshal, account fees.....	405.31
Paid Clerk U. S. District Court, account fees.....	26.25
	<hr/>
	\$5,971.07

X.

That in addition to the sums so expended, as appears by paragraph nine of this complaint, The Globe Navigation Company, for the joint benefit of itself and the Fireman's Fund Insurance Company, has expended in and on account of said schooner and in and on account of the salvage claim made as aforesaid, the [8] additional sum of \$2,462.45.

XI.

That the Trust Company of America, trustee mortgagee in Policy No. 103,834 of said defendant, has for value received sold, transferred and assigned all its right, title and interest in and to said policy of insurance, and any money due or to become due thereunder to the plaintiff.

XII.

That said voyage was so utterly broken up and lost, and said schooner and her outfits, cargo and stores were totally lost by the perils of the sea and perils insured against in said policy, and the defendant had due notice thereof, and became bound to pay the sum insured in said policy to the plaintiff, together with said salvage and additional charges, as provided in said policy.

XIII.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court, and that said defendant is within said jurisdiction.

For a second cause of action against said defendant:

I.

Plaintiff repeats the allegations contained in para-

graphs one and two of its first cause of action herein, to the same intent and purpose as if set forth at length herein, and makes said paragraphs a part of its second cause of action.

III.

That on the 17th day of April, 1911, the defendant made to plaintiff a policy of insurance for the sum of Twenty-four Thousand Dollars on the schooner "Wm. Nottingham" against [9] the perils of the sea and other perils therein mentioned, during the time in said policy set forth, which said policy of insurance is identical in every respect with the policy referred to in paragraph three of plaintiff's first cause of action, a copy of which is annexed to this complaint, save and except that the sum insured is twenty-four thousand dollars instead of six thousand dollars, and in case of loss, to be paid to this plaintiff instead of the Trust Company of America, and that the premium therefor was the sum of twelve hundred dollars instead of the sum of three hundred dollars, and the plaintiff incorporates here all the other terms and conditions of said policy, the same as if set forth at length herein.

IV.

Plaintiff repeats the allegations contained in paragraph four, five, six, seven, eight, nine, ten, twelve and thirteen of its first cause of action herein, to the same intent and purpose as if set forth at length herein, and makes said paragraphs a part of this its second cause of action.

WHEREFORE, plaintiff prays judgment as against said defendant for the sum of Thirty Thou-

sand Dollars damages on account of the loss of said schooner "Wm Nottingham," and for such other and further sums as said defendant may be liable to the plaintiff on account of the loss of said schooner, and expenses incurred by said plaintiff incident to the matters and things set forth in its bill of complaint herein, and for such other and further relief in the premises as in law and justice it may be entitled to receive, and for its costs in this behalf expended.

H. R. CLISE,
W. H. BOGLE,
Attorneys for Plaintiff.

Postoffice Address:

405 New York Building,
Seattle, Washington. [10]

United States of America,
State of Washington,
County of King,—ss.

George F. Thorndyke, being first duly sworn, on oath says, that he is the manager of the Globe Navigation Company within the State of Washington. That he has read the foregoing bill, knows the contents thereof and that the matters and things therein stated are true as he verily believes, and that the matters and things therein stated are peculiarly within his knowledge, he having the control and management of plaintiff's affairs within said State.

GEORGE F. THORNDYKE.

12 *Fireman's Fund Insurance Company vs.*

Subscribed and sworn to before me this 10th day of May, 1912.

[Seal]

H. R. CLISE,
Notary Public in and for the State of Washington,
Residing at Seattle. [11]

Exhibit "B" [to Complaint].

Seattle, Wash., Oct. 16th, 1911.

Fireman's Fund Insurance Company,
Colman Bldg.,
Seattle, Wash.

Dear Sirs:

You are hereby notified that we have just received telegram from the Master of the Schooner "Wm. Nottingham," of which the following is a copy.

"Confirm Nelson's telegram 'Nottingham' filled October eight lost deckload and masts went by the board October ninth. Abandoned vessel October thirteenth latitude north 46.16, longitude west 125.25 fore and after part of vessel gutted lost all fresh water. Do you authorize me to pay crew?"

In consequence of the damages sustained we hereby abandon to you the schr. "Wm. Nottingham" and claim for a total loss under the policies issued by you and outstanding upon her.

It will give us great pleasure to give you any information that you may require, or any assistance we can render in order to protect you. At present

we are not informed as to the particulars.

Yours truly,

THE GLOBE NAVIGATION COMPANY,
GFT/G. Per G. F. THORNDYKE. [12]

Exhibit "C" [to Complaint].

No. 103,834

Hull Time.

\$6000

**FIREMAN'S FUND
INSURANCE COMPANY
SAN FRANCISCO, CALIFORNIA.**

IN CONSIDERATION OF Three Hundred
Dollars to it agreed to be paid by the insured herein-
after named by these presents Insures Six thousand
Dollars on account of

THE GLOBE NAVIGATION COMPANY
In case of Loss to be paid to The Trust Company of
America, Trust Mortgagee.

From the 20th day of April, 1911, at noon until
the 20th day of April, 1912, at noon Pacific Standard
time upon his or their interest as owners in the body
machinery, tackle, apparel, and other furniture of
the good schooner "Wm. Nottingham," Vessel Val-
ued at Forty-five Thousand Dollars.

The insured in accepting this policy, hereby binds
himself or themselves according to the following
agreements and stipulations:

1st. In case of loss, same to be paid in sixty days
after proof and adjustment of loss and proof of in-
terest in the said vessel, (the amount of the notes
given for premium, if unpaid, being first deducted,
and all sums due or coming due to the Company
from the insured being first paid or secured to the

satisfaction of the Insurers,) but no partial loss or particular average shall in any event be paid under this Policy. This Company not to be liable for any sums the insured may pay to another vessel, her cargo or freight, for or on account of collision.

If on a passage at expiration of the term, with liberty to the insured to renew the Policy for three months at the same rate of premium, if application be made to the Company on or before expiration of the first term. The risk, however, is to terminate at any port, or place at which the vessel may first arrive during said extended time, on her being moored therein in good safety. A pro rata premium to be returned for each entire month not entered upon of the extended time, no claim being made.

2d. Each passage subject to separate average. A new passage shall be deemed to begin as soon as the vessel shall have discharged her Cargo at a Port or place of destination, or such part of her cargo as may be destined to such Port or place; or if in ballast, or not discharging her cargo, twenty-four hours after she shall have been moored in good safety at such Port or place of destination. [13]

3d. Touching the adventures and perils which this Insurance Company is contented to bear, and takes upon itself in this Policy, they are of the Seas, Fires, Pirates, Assailing Thieves, Jettisons, Barratry of the Mariners (but not of the Master), embezzlement and illicit trade, or any trade in articles contraband of war excepted in all cases, and all other losses and misfortunes that shall come to the hurt or damage of the vessel hereby insured, or any part

thereof, to which insurers are liable by the Rules and Customs of Insurance in San Francisco, including the Rules for Adjustment of losses printed on back hereof and the provisions of the Civil Code of California, excepting such losses and misfortunes as are excluded by this policy.

4th. Not to use any ports or places on the west coast of the United States of America south of San Francisco except Santa Cruz, Monterey, San Simeon, Port Harford, Gaviota, Goleta, Santa Barbara, San Buena Ventura, Hueneme, Port Los Angeles (Santa Monica), Redondo, San Pedro, Newport and San Diego. Nor any ports and places on the west coast of America north of San Francisco nor islands adjacent thereto, except Umpqua and Columbia Rivers, Humboldt, Coos and Shoalwater Bays, Gray's Harbor, Sitka, Ounalaska and St. Paul's Harbor and Ports inside the mouth of the Straits of Fuca. Not to use any inside passage on the west coast of America north of Comox, Vancouver Island, nor ports or places on the east coast of Asia north of Shanghai, nor Islands adjacent thereto, except ports in Japan. Not to use ports and places on the coast of Mexico between July 1st and November 1st. Not to use Torres Straits nor any Guano Islands, nor to engage in any inter-island trade, nor to use any ports or places in the South Pacific Ocean situated between the Equator and latitude 30 degrees south, and between longitude 120 degrees west and 155 degrees east between December 1st and March 31st, except Taiohai, Marquesas Islands, and Papeete, Society Islands, nor to go on a

Valuation
\$45000.

whaling, fishing, sealing or trading voyage. It shall and may be lawful however for said vessel, in her voyage, to proceed and sail to, touch and stay at any ports or places if thereunto obliged by stress of weather or other unavoidable accident without prejudice to this insurance.

5th. Not to load more than net registered tonnage with Guano, Salt, Iron, Stone, Ore or Lime. Not to carry bituminous coal in bulk, except between ports in the Pacific Ocean. Not to carry Grain in bulk, nor to proceed to sea Grain laden, except coastwise, without a certificate from an Inspector appointed by Underwriters upon the hull or cargo stating that the vessel is properly laden and fitted for her intended voyage.

6th. This Company is not to be held liable in general average or otherwise for Sum Insured \$6000.- jettison of deck cargo unless the vessel is stranded, nor for wages and provisions, except when the same are a general average charged by the custom of the port of destination; nor in case of insurance upon a steamer for any injury to the machinery or boilers, nor for loss or damage to the vessel itself caused by explosion of boilers, unless occasioned by stranding, striking the ground, sinking, burning or collision with another vessel; nor for fuel, wages or provisions, or expenses of delay consequent upon repairs of any kind on any steamer except in general average for wages and provisions of that portion of the crew absolutely necessary for the navigation of the vessel; nor for any claim for loss or expense arising from capture, seizure, de-

tention, destruction, or the consequences of any attempt thereat by any hostile nation, or by any government, or by any officer, civil or military, claiming to act in its name or under its authority; nor by any insurgent or [14] revolutionary power (piracy excepted), anything herein to the contrary notwithstanding; also warranted not to abandon in case of blockade, and free from any expense in consequence thereof, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage.

7th. In case of any loss or misfortune resulting from any peril insured against, the party insured hereby engages for himself or themselves, his or their factors, servants and assigns, to sue, labor and travel, and use all reasonable and proper means for the security, preservation, relief and recovery of the property insured or any part thereof, and also to use all proper and legal means to recover, through general average, or otherwise, from the parties interested in Freight or Cargo, either or both, any and all sums due to the vessel or its owners on account of sacrifices, losses or expenses, incurred for the general safety or the common good, to the charges whereof this Company will contribute in proportion as the sum insured is to the whole sum at risk; nor shall the acts of the Insured or Insurers in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment.

Rate Per
cent 5

8th. It is agreed that one-third shall be deducted from the cost of all repairs of injuries and losses on the vessel by the perils insured (except on

Anchors, Copper and calking under the Copper), as a commutation for the average difference between new and old; the remains of all articles replaced being considered as salvage, and their proceeds deducted from the gross loss. And it is especially agreed that, instead of deducting one-third for new on the expense of re-metaling, including docking and calking, there shall be deducted two and one-half per cent of the cost of re-metaling, docking and calking, after deducting the value of the old metal and nails, for each and every month the metal shall have been on the vessel at the time when it is taken off; and if it shall have been on forty months or more, the cost shall be wholly borne by the Insured. In case the vessel shall be on a single bottom, the same rule shall apply to docking and calking, but one-twelfth to be deducted from the cost of painting for every month the paint shall have been on the bottom, and when the same shall not have been repainted for twelve months, the whole cost to be borne by the insured.

9th. It is also agreed that the insured shall not have the right to abandon the vessel unless the amount which this Company would be liable to pay under an adjustment, as of partial loss for labor and materials, (exclusive of salvage or general average expenses and the cost of funds) shall exceed half the amount hereby insured; and when the vessel is in a port or place where she can lie in safety, she shall in no case be sold for or on account of the insurers, until the estimated cost of repairs shall have been communicated to them

Premium
\$300.

and their consent to the sale obtained; and in case of the total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew for wages earned or services rendered previously to the loss shall be considered as so much of the salvage applied to the use of the shipowners, even though the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss.

10th. It is also agreed that no assignment of this Policy shall be valid unless the written consent of the Insurers be first obtained and endorsed hereon. In all cases of return of premium, in whole or in part, ten per cent upon the return premium is to be retained by the Insurers. [15]

11th. And it is agreed that in the event of the insured failing or refusing to pay the premium, or any premium note when due, that it shall be at the option of the Company at any time thereafter upon written notice to the insured or his agent, to declare this Policy to be null and void; but the insured shall remain liable for such proportion of the premium or premium note as corresponds with the expired time at the date of such notice.

12th. It is furthermore Hereby Expressly Provided and Agreed that no suit or action against this Company for the recovery of any claim upon, under or by virtue of this Policy shall be sustained in any Court of Law or Chancery, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall have occurred; said period of twelve months to commence

running from the time of such loss or damage, and not from the date when proofs of loss are made, or the amount of such loss or damage is ascertained, or any right of action under this Policy shall accrue; and in case any such suit or action shall be commenced against this Company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

13th. If there be an Agent of the Insurers located at or near any place where repairs are made, or proofs of loss or average taken, said Agent must be represented on the surveys, if any be held, and all bills for repairs, or proofs of loss or average, must be certified to by him, or they will not be allowed by this Company.

14th. In all cases of general average and/or salvage expenses, where the contributory value as stated in the adjustment, exceeds the value expressed in the policy, the liability of this Company shall be limited to the proportion which the amount insured bears to said contributory value.

(On margin.)

It is agreed that, if the vessel hereby insured shall come into collision with any other vessel, and the insured shall in consequence thereof become liable to pay, and shall pay any sums not exceeding the value of the vessel hereby insured, in respect of injury to such other vessel itself, or to the goods and effects on board thereof, or for loss of freight then

being earned upon such goods by such other vessel the insurers will pay the insured such proportion of three-fourths parts of said sums as the amount hereby insured bears to the value of the vessel hereby insured (but not exceeding in any event the amount of this policy). But this agreement is in no case to be construed as extending to any sums which the insured may become liable to pay or shall pay in respect of loss of life or personal injury to individuals, from any cause whatever.

Warranted not to carry coal or case oil from ports and/or places on the Atlantic Coast.

This insurance is against total and/or constructive total loss of vessel including general average and/or salvage charges and/or claims under three-fourths (3/4) running down clause.

IN WITNESS WHEREOF, the FIREMAN'S FUND INSURANCE COMPANY has caused these presents to be signed by its duly authorized officers, in the city of San Francisco, State of California, this 17th day of April, One Thousand Nine Hundred and eleven.

WM. J. DUTTON,
President. [16]

RULES FOR ADJUSTMENT OF LOSSES

Under this Policy.

Rule I.

Metal and Metaling.

The following items shall be considered as chargeable to the Metaling:

1. The metal and nails.
2. The paper or felt; both at their cost, delivered

alongside or on board the vessel.

3. The labor of stripping off the old metal, and of punching and putting on the new, which is to be charged at the price actually paid therefor, when a separate bill for such labor can be procured. And in default of such separate voucher, the labor on the metal is to be estimated at the rate of thirteen (13) sheets of metal to the day's work, as charged for in the calker's bill of labor.

4. The cost of picking up the old metal and packing the same for sale.

Patching Metal.

5. Patching metal and calking under the same, when more than twenty (20) sheets are used, shall be adjusted in the same manner, so far as relates to the copper clause in the Policy, as when the whole bottom is stripped and re-metaled. When less than twenty sheets are used, the patching and calking under the same shall be placed in the vessel column, one-third off.

Rule II.

Docking and Calking.

The clause making the cost of docking and calking chargeable to Underwriters in the same ratio as re-metaling, shall be construed and defined to mean:

1. That when a vessel is docked or hove out solely for the purpose of remetaling (or, if on a single bottom, of recalking), all the expenses attending the docking or heaving out and calking, including materials used therefor, shall be charged to owners at the rate of two and one-half per cent per month for every month that the metal shall have been on the

vessel at the time when it is taken off, or, if on a single bottom, for every month intervening since she was last calked.

2. When a vessel is docked, or hove out for the two-fold purpose of remetaling, (or, if on a single bottom, re-calking) and repairing keel or bottom, by reason of having collided or stranded, then the expense of docking or heaving out shall be proportioned pro rata upon coppering and (or) calking and other repairs, in the proportion of the number of days' work expended upon each respectively. The above rules shall also apply to wharfage, but no wharfage shall be allowed for, except when indispensably necessary to the repairing of the vessel.

3. In default of a separate bill for calking, the labor of reefing out the old oakum, picking, spinning and putting in the new and pitching the seams, is to be estimated at three and one-half ($3\frac{1}{2}$) days' labor to the bale of oakum used, and the time occupied and material used in recalking under the metal, shall be estimated at one-half of the time and material required for recalking the whole vessel exclusive of decks.

4. The expenses attending the calking above the metal shall be adjusted less one-third for new.

5. The expense of navigating and towing the vessel to and from, and entering dock, including pilotage and wages and provisions of hands specially employed to navigate the vessel to and from the place of repair, shall follow the docking or heaving out as herein defined. But the wages and provisions of the regular crew of the vessel shall never be al-

lowed for in particular average. [17]

Rule III.

Commissions.

All commissions actually paid in a foreign or domestic port shall be chargeable as heretofore to the various interests adjusted upon. But no other commission shall be chargeable against insurers on disbursements in partial or salvage losses, nor in General Average, when ship and cargo belong to the same owners, nor in any other case when no such commissions have been actually paid, and when no charge therefor would be customary, or collectible in the ordinary course of the business of the insured, had no disaster occurred.

Rule IV.

Adjuster's Fees.

The Adjuster's fees in Particular Average, whether on vessel, cargo, or freight, shall be chargeable in the adjustment to the various interests adjusted upon, and shall be in proportion to the several amounts as apportioned therein.

Rule V.

Adjuster's Attitude.

The traditional and necessary attitude of an adjuster is that of a Referee and not that of an Attorney or Advocate. It is his duty, in all cases, to act with strict impartiality between insurers and insured, regardless of favor toward friend or employer, and intent solely upon the legal and clerical accuracy of his calculations. This rule shall be understood to be binding in cases of Particular Average, and in adjustments upon estimates for repairs, made with a

view to compromise, with the same force as in cases of General Average.

Rule VI.

Surveys.

The insurers shall not be obliged to accept any adjustment on a vessel based upon a survey which omits to discriminate between the repairs attributed only to the perils insured against, and such repairs as are due only to wear and tear, or to the original defects, natural decay, or depreciation of the vessel.

Rule VII.

Bills for Repairs.

When bills for repairs are presented, which include items indifferently specified chargeable partly to owners and partly to underwriters, and having no reference to discriminations in the survey, the adjuster shall require the claimant or master to separate the charges in accordance with the survey. Failing wherein, the adjuster shall refer the bill back to the maker thereof, with a request to separate the items, so as to correspond with the survey. Failing in both, it shall be the custom to charge the whole of the unspecified items to the "owner's" column. [18]

Rule VIII.

Special Charges on Cargo.

When sacrifices are made or expenses incurred for the benefit of all concerned in ship and cargo, and by reason of loss or condemnation of the ship, the cargo is the only interest saved to contribute, the proper proportion of such losses shall be paid by insurers on cargo, as General Average losses, though adjusted under the name of Special Charges on Cargo; and

notwithstanding that the goods may be insured "free of particular average."

Rule IX.

Appointment of Surveyors and Appraisers.

In all cases of Average, whether General or Particular, whether on Hull or Cargo, the selection and appointment of Surveyors and Appraisers shall be agreed upon beforehand by and between the insured or claimants in average or their representatives of the insurers on the other; and the services of the persons so appointed shall be understood to be wholly disinterested as between all parties concerned. No representative of underwriters shall be expected to certify, approve or accept any surveys or appraisements made in contravention of this rule; but such documents shall be deemed to be wholly *ex parte* in character, and, as such, open to criticism, or liable to be rejected altogether.

In no case shall any ship-carpenter, rigger, or other mechanic who may have served on a survey, be employed to make the repairs, or any portion thereof.

Rule X.

Payment of Losses.

All losses shall be payable sixty days after proof and adjustment of loss and proof of interest, and if payment be anticipated, interest shall always be discounted for the time so anticipated, at the current rate of interest at the time of payment. Provided, however, that General Average claims and losses of other descriptions, amounting to less than five hundred dollars (\$500), may be paid, without discount, so soon as ascertained; and nothing herein

contained shall apply to sums paid in compromise.

Rule XI.

Wages and Provisions in General Average.

The schedule of allowance for wages and provisions in General Average shall be fixed as follows:

Wages: The actual wages paid, at the prices specified upon the articles.

Provisions:

For Masters\$1.50 per day

For Mates 0.75 “ “

For Seamen and others..... 0.40 “ “

And the period for which wages and provisions shall be allowed, shall be from the day of bearing away for a port of distress, until the vessel is ready for sea.

[Indorsed]: Complaint. Filed in the U. S. District Court, Western Dist. of Washington, May 13, 1912. A. W. Engle, Clerk. By S., Deputy. [19]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Corporation,

Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Defendant.

Answer.

To the Honorable C. H. HANFORD, Judge of the
Above-entitled Court:

The answer of Fireman's Fund Insurance Company, a corporation, the above-named defendant, to the allegations of the complaint of the Globe Navigation Company, a corporation, the above-named plaintiff, admits, denies and alleges as follows:

I.

Defendant admits the allegations of paragraph 1 of the first cause of action.

II.

Defendant admits the allegations of paragraph 2 of said first cause of action.

III.

Defendant admits the allegations of paragraph 3 of said first cause of action. [20]

IV.

Answering unto the allegations of paragraph 4 of said first cause of action, defendant alleges that it has no actual knowledge in respect thereto, but admits that it has been informed that the incidents therein set forth actually occurred, and at the same time demands that strict proof be made thereof.

V.

Defendant admits the allegations of paragraph 5 of said first cause of action.

VI.

Defendant admits the allegations of paragraph 6 of said first cause of action, but denies that any grounds existed for the giving of said notice of abandonment, and alleges that said abandonment was

not accepted by defendant.

VII.

Defendant admits the allegations of paragraph 7 of said first cause of action.

VIII.

Defendant admits the allegations of paragraph 8 of said first cause of action.

IX.

Answering unto the allegations of paragraph 9 of said first cause of action, defendant admits that it was mutually agreed between the parties in interest, including the parties to this action, that said schooner should be relieved of the salvage claims of the said salvage libelants, together with the expenses necessarily incurred in said salvage proceedings, and admits that it has knowledge that the sum of Three Thousand Dollars (\$3,000) was paid the port of Portland for salvage claims of libelants, and that while it has been [21] informed that certain sums of money were paid by plaintiff on account of the other items set forth in said paragraph 9, defendant has no actual knowledge thereof, and for that reason denies the same, and demands that strict proof be made of each and every item therein contained. Defendant denies the remaining allegations of said paragraph.

X.

Defendant denies each and every of the allegations of paragraph 10 of said first cause of action.

XI.

Defendant has no knowledge or information as to

the truth of the allegations of paragraph 11 of said first cause of action, and for that reason, denies the same, and demands strict proof thereof.

XII.

Defendant denies each and every of the allegations of paragraph 12 of said first cause of action.

XIII.

Defendant admits that all and singular the premises are within the admiralty and maritime jurisdiction of this Honorable Court and that said defendant is within its jurisdiction, but denies that all and singular the premises are true.

I.

Defendant admits the allegations of paragraph 1 of the second cause of action contained in said complaint.

II.

Defendant admits the allegations of paragraph 2 of the said second cause of action. [22]

III.

Answering unto the allegations of paragraph 3 of said second cause of action, defendant reiterates its answers to paragraphs 4, 5, 6, 7, 8, 9, 10, 12 and 13 of said first cause of action, and hereby makes its said answers to said paragraphs, the denials, allegations and demands of proof therein contained, answers unto paragraph 3 of said second cause of action and to the paragraphs of said first cause of action repeated in and made a part of said paragraphs 3 of said second cause of action, with the same intent and purpose as if set forth at length herein.

Further answering unto the allegations of said complaint, defendant alleges:

I.

That while plaintiff served upon defendant the so-called notice of abandonment marked exhibit "B" and attached to said complaint, defendant then refused, and ever since has refused, to accept the said abandonment and that no sufficient grounds existed for abandoning said schr. "Wm. Nottingham" unto defendant, under the terms and conditions of said policies of insurance referred to in said complaint.

II.

Defendant admits that it will ultimately be liable, under its aforesaid policies of insurance for its proportion of general average and salvage charges accruing from the preservation of said vessel and cargo, but alleges that the amount thereof is unknown, and will not become known until an adjustment of the same has been stated, so that defendant is unable to make any tender unto plaintiff of the amount of such liability, if any amount is ultimately found to be due [23] and owing.

III.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE defendant prays that the action herein may be dismissed and that it may recover its

costs and disbursements herein incurred.

BALLINGER, BATTLE, HULBERT &
SHORTS,

PAGE, McCUTCHEN, KNIGHT & OLNEY,
Attorneys for Defendant.

Postoffice address:

901 Alaska Building,
Seattle, Washington. [24]

State of Washington,

County of King,—ss.

Frank G. Taylor, being first duly sworn, on oath,
deposes and says:

That he is the General Agent of the Fireman's
Fund Insurance Company for the State of Washing-
ton, and as such makes this verification for and on be-
half of said corporation; that he has read the forego-
ing answer; knows the contents thereof, and believes
the same to be true.

FRANK G. TAYLOR.

Subscribed and sworn to before me this 13 day of
June, 1912.

[Seal]

BRUCE C. SHORTS,
Notary Public in and for the State of Washington,
Residing at Seattle.

Service of the within Answer and receipt of a copy
is hereby admitted this 13th day of June, 1912.

H. R. CLISE,
W. H. BOGLE,
Attorneys for Pltfs.

[Indorsed]: Answer. Filed in the U. S. Dis-
trict Court, Western Dist. of Washington. June 13,
1912. A. W. Engle, Clerk. By S., Deputy. [25]

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Defendant.

Respondent's Bond.

KNOW ALL MEN BY THESE PRESENTS:
That the Fireman's Fund Insurance Company, a cor-
poration, as principal, and the Southwestern Surety
Insurance Company, a corporation, organized under
the laws of the State of Oklahoma and authorized to
do business in the State of Washington as surety
therein, as surety, are held and firmly bound unto the
United States of America, for the use of all persons
who may be interested in the premises, in the sum
of Two Hundred and Fifty (\$250.00) Dollars, for
the payment of which sum, well and truly to be made,
we do bind ourselves and each of our successors,
jointly and severally, firmly by these presents.

Signed and sealed at Seattle, Washington, this
13th day of June, 1912.

THE CONDITION of this obligation is such that,
if the said Fireman's Fund Insurance Company, a
corporation, respondent in the above-entitled action,

instituted in said court by the Globe Navigation Company, a corporation, against said [26] respondent, shall pay all costs which by the decree, mandate or practice of this court it may become liable to pay, then this obligation to become void and of no effect; otherwise, to remain in full force and virtue.

FIREMAN'S FUND INSURANCE COMPANY.

By FRANK G. TAYLOR,
Its General Agent.

SOUTHWESTERN SURETY INSURANCE COMPANY.

By E. LAMPING,
Its Resident Vice-President.

By S. ULVEN,
Resident Asst. Secretary.

[Indorsed]: Respondent's Bond. Filed in the U. S. District Court, Western Dist. of Washington. June 13, 1912. A. W. Engle, Clerk. By S., Deputy. [27]

**[Order Referring Cause to Commissioner for Taking
of Testimony, etc.]**

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Plaintiff,

vs.

FIREMEN'S FUND INSURANCE COMPANY, a
Corporation,

Defendant.

ORDER OF REFERENCE.

The above-entitled cause in admiralty being at issue upon the libel or complaint of the Globe Navigation Company, a corporation, libelant, and the answer thereto of Firemen's Fund Insurance Company, a corporation, respondent,

Now upon motion of the proctors of record for the said respondent,

IT IS HEREBY ORDERED that the said cause be and it is hereby referred to the Hon. A. C. Bowman, Commissioner of the above-entitled court, for the taking of testimony; and it is further ordered that the libelant do have until July 23d, 1913, in which to introduce its direct evidence and testimony, and that the respondent shall have three full days thereafter in which to introduce its evidence and testimony; and

IT IS FURTHER ORDERED that the said commissioner report the testimony and evidence so taken, to this Court, on or before August 9th, 1913.

DONE in open court this 2d day of July, A. D. 1913.

EDWARD E. CUSHMAN,
Judge.

We, the undersigned, proctors of record for libelant, do consent to the foregoing order.

H. R. CLISE and
W. H. BOGLE,
Proctors for Libelant.

O. K.—H. R. [28]

[Indorsed]: Order of Reference. Filed in the U. S. District Court, Western Dist. of Washington. July 2, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [29]

**[Stipulation re Deposition of William Cornfoot
et al.]**

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2151.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Complainant,

vs.

FIREMEN'S FUND INSURANCE COMPANY, a
Corporation,

Defendant.

IT IS HEREBY STIPULATED, by and between H. R. Clise, Esq., Proctor for Libellant, and Ira A. Campbell, Esq., Proctor for Respondent, that the depositions of WILLIAM CORNFOOT and ROBERT McINTOSH, may be taken before Alva W. Person, a Notary Public for the State of Oregon, in the City of Portland, on this first day of August, 1913, without the issuance of a formal commission for the taking of the same; that the testimony of said witnesses may be taken in shorthand by said Notary and thereafter reduced to typewriting and the signatures of the witnesses to said depositions may be waived; that said depositions may be offered in evidence in said case by either party to this stipulation, without objection to the form or manner or time of taking the same.

Mr. CLISE.—In so far as the testimony about to be taken relates to an adjustment as a partial loss for labor and material, I object as incompetent, irrelevant and immaterial and not competent under the policies of insurance mentioned in complainant's [30] complaint and upon which the complainant's action is founded. And it is understood that this objection may apply to all such testimony, without any specific objections being taken to particular questions.

Mr. CAMPBELL.—Yes, that is agreed to. To clear my own mind upon that, Mr. Clise, I understand that your position on the question of law is that the provisions of clause nine of the policy do not apply?

Mr. CLISE.—Yes, that is my contention.

Mr. CAMPBELL.—That is, clauses eight and nine.

Mr. CLISE.—Yes, clauses eight and nine.

Mr. CAMPBELL.—I think there are certain clauses on the back of the policy, too.

Mr. CLISE.—Yes; and it may be such other clauses as relate to adjustment or partial loss.

Mr. CAMPBELL.—Yes. I will call Mr. Cornfoot.

[Deposition of William Cornfoot, for Respondent.]

WILLIAM CORNFOOT was thereupon produced as a witness on behalf of the respondent, and, having been first sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. How old are you, Mr. Cornfoot?

A. I am forty-six.

Q. Where do you reside?

A. 336 Martin street, Portland, Oregon.

Q. What business are you engaged in?

A. Machine shop and general repair work. [31]

Q. Are you the proprietor of any engineering company in this city? A. I am.

Q. Of what one?

A. Albina Engine & Machine Works.

Q. Are you a marine engineer? A. I am.

Q. What experience have you had as a marine engineer?

A. Well, in ship experience I served my apprenticeship amongst marine engines, and I sailed the seas as junior engineer for six years, chief en-

(Deposition of William Cornfoot.)

gineer for eight years and a half—five years junior; thirteen years and a half altogether.

Q. Of what class of ships were you chief engineer?

A. Foreign going, British ships.

Q. Of what size?

A. The last ship I was chief engineer of was the Steamship “Adato.” She carried five thousand five hundred approximately, cargo.

Q. Tons? A. Yes.

Q. Did she ply out of the Port of Portland at one time? Did she run out of the Port of Portland at one time?

A. Yes, she ran out of here about two years, voyage after voyage.

Q. To the Orient?

A. To the Orient, Manila, Hong Kong; different ports in China.

Q. How long have you been engaged in the engine and machine works business?

A. In business nine years.

Q. At what place? A. In Portland, Oregon.

Q. What character of a plant has the Albina Engine & Machine Works? [32]

A. First-class repairing plant, up to date in every respect.

Q. Was the Albina Engine & Machine Works a bidder for the repairs of the schooner “Nottingham”? A. Yes, sir.

Q. At the time she came into the Port of Astoria and the Port of Portland after her trouble in October, 1911?

(Deposition of William Cornfoot.)

A. Yes, in December, anyhow, 1911, or January, 1912.

Q. Who, representing the Albina Engine & Machine Works, put in the bid for the repairs?

A. William Cornfoot.

Q. Yourself? A. Yes.

Q. Upon what was that bid based?

A. On practical knowledge of the work.

Q. Yes, but for what work was the bid?

A. For the whole work, repairing of the ship to put her in a seaworthy condition.

Q. What did you have, if anything, advising you as to the work which was to be done?

A. What did I have?

Q. Yes. From what did you obtain your knowledge as to the required work of repair?

A. Well, by inspection of the work and personal knowledge of the character of the work, by Mr. McIntosh's knowledge as carpenter, and several visits down to the ship, and talks with Captain Swenson.

Q. Where did he furnish them to you?

A. Brown & McCabe's office, stevedores.

Q. In the city of Portland?

A. In the city of Portland, Second and Ash streets.

[33]

Q. Have you the specifications here?

A. I don't have them with me personally now.

Mr. CAMPBELL.—Have you got them, Mr. McIntosh?

Mr. ROBT. McINTOSH.—They are here; yes.

(Deposition of William Cornfoot.)

That is the original copy of the specifications (producing papers).

Mr. CAMPBELL.—Mr. Thorndyke's signature appears at the close, before the last. (Mr. Campbell passed said paper to Mr. Clise.)

Mr. CLISE.—Are you going to offer them in evidence?

Mr. CAMPBELL.—May we take this until the close of this litigation?

Mr. ROBT. McINTOSH.—You can.

Mr. CAMPBELL.—I should like to offer the specifications in evidence.

Thereupon said paper was marked Cornfoot Exhibit 1, and is attached to this deposition as a part of the same.

Q. What was the amount of your bid that you made to the Globe Navigation Company to do the work called for by the specifications?

Mr. CLISE.—I will object as not the best evidence.

A. Twenty thousand nine hundred and fifty dollars.

Q. Did you make that bid in writing or orally?

A. In writing.

Q. To whom was it given?

A. I think Mr. McIntosh presented that bid. I wasn't at the opening of the bids on that day.

Q. Now, Mr. Cornfoot, what experience have you had in the repair of vessels?

A. I don't know. I have been raised amongst vessels all my life. [34]

(Deposition of William Cornfoot.)

Q. Have you at any time done any repair on other vessels?

A. Yes; I have done all sorts of repairs. I think I have got a record of two or three hundred ships that I have repaired at different times and in different ways.

Q. Name me some of the vessels on which you have done work within recent years.

A. Well, I have done all the Dollar Line's work for the last eight years, every ship that comes to port.

Q. What character of vessels does the Dollar Line have? A. Steamers.

Q. Is that the Dollar Steamship Company of San Francisco?

A. The Dollar Steamship Company of San Francisco.

Q. On what of their vessels do you remember having done work?

A. Well, I have done work on the "Hazel Dollar," "Bessie Dollar," "Stanley Dollar," "Robert Dollar."

Q. What types of vessels are the "Robert Dollar," the "Hazel Dollar" and the "Bessie Dollar"?

A. Modern steam vessels.

Q. About what tonnage are they?

A. Ships carrying about six thousand or seven thousand tons.

Q. Have you ever done any work for the United States Government? A. I have.

Q. What character of work?

(Deposition of William Cornfoot.)

A. General repair work and engine repairs, deck repairs, putting plates on ships' sides.

Q. For what departments of the Federal Government have you done such work?

A. I have done work for the engineer's department, for the quartermaster's department, the Light-House Service.

Q. What vessels of the Light-House Service have you ever done any [35] work on?

A. "Light Vessel No. 88"; the Light-house Tender "Columbine."

Q. Do you remember the amount of work that was done on the "Columbine"?

A. It was about a ten thousand dollar job, ten or eleven thousand.

Q. Did anyone join with you in doing the Government work on the "Columbine"? A. Yes, sir.

Q. Who was it? A. Mr. McIntosh.

Q. Robert McIntosh? A. Robert McIntosh.

Q. Did anyone combine with you and do the work on the "Lightship No. 88"? A. Yes, sir.

Q. Who was it? A. Robert McIntosh.

Q. Was that work done under bids?

A. Under bids.

Q. In whose name were the bids put in?

A. By the Albina Engine & Machine Works.

Q. Who stood financially responsible for the work? A. William Cornfoot.

Q. Who? A. I did.

Q. When you say I, do you mean—

A. (Interrupting.) William Cornfoot, yes, sir.

(Deposition of William Cornfoot.)

Q. (Continuing.) — the Albina Engine Works?
[36]

A. Well, I am the proprietor of the Albina Engine & Machine Works, sole proprietor; so that I was solely responsible.

Q. You are the sole owner of the Albina Engine & Machine Works? A. I am the sole owner.

Q. Did you ever do any work on the "San Jacinto"? A. Yes, sir.

Q. What was the character of that work?

A. Well, she came in here in a half sinking condition, water-logged; her bottom was practically torn out. She was replanked and repaired completely, fore and aft, both sides, and the engine works; there was a new tail shaft put in her and the engines were overhauled and everything adjusted and repaired.

Q. What type of vessel is the "San Jacinto"?

A. Just an ordinary steam schooner.

Q. Engaged in the lumber trade on the Coast?

A. Yes.

Q. Was she wood or a steel vessel?

A. She is a wooden vessel.

Q. Did anybody join with you in doing that work?

A. Yes, sir.

Q. Who was it? A. Robert McIntosh.

Q. What part of the work did Mr. McIntosh do?

A. He did all the woodwork.

Q. What did that include?

A. That practically included a new bottom, beams and knees.

(Deposition of William Cornfoot.)

Q. How large a job was that?

A. You mean in money?

Q. Yes.

A. Somewhere about twelve thousand dollars.

[37]

Q. In whose name was that bid rendered?

A. Well, it was individual, as far as that goes; but I had been doing work for the Wood Lumber people for quite a while. Captain Hansen was in charge of the "San Jacinto" when she arrived here, and he wished me to do the work and I got Mr. McIntosh to do the woodwork. He had it in his own name and I had the iron work in my own name.

Q. When you speak of the Wood Lumber Company, what company is that? What is the full name? A. E. H.

Q. E. K.?

A. Or E. K. I have been doing their repairs for the last seven or eight years.

Q. Do you recall the ship "Acme"? A. I do.

Q. Did you ever do any work on her?

A. Yes, sir.

Q. In what condition did she come into the Port of Portland?

A. She came dismasted, top mast gone and upper yards lost.

Q. Do you remember the amount of that job?

A. About twenty-two thousand dollars.

Q. What was the nature of the repairs you put on that vessel?

A. New yards and rigging. Of course, that neces-

(Deposition of William Cornfoot.)

sitated all the new bands, and things of that kind, on the yards.

Q. Incident to the repair of a dismasted ship?

A. Yes; yes; besides other small repairs, such as the runway bridge there, fore and aft. That was all broken. And the hand rail all broken up, and other repairs to the chain gear, wash boards, and such as that on ship's side, and bulwarks.

Q. How long have you known Robert McIntosh?

[38] A. Ten years.

Q. What is his general reputation for responsibility and character of work?

A. His reputation, so far as I know it, is that he is about the best general knowledge man in this town as a carpenter in the ship repair work, and I find him so.

Q. What has been your experience with Mr. McIntosh as to his responsibility in doing work and carrying out work? A. Been friendly.

Q. What has been your experience with the character of work that he has done?

A. It has always been done satisfactorily, and everything has been satisfactory to everybody. I haven't had any complaints, or anything of that kind, any work that has been in my name while he was working in conjunction with me.

Q. Have you any knowledge of Mr. McIntosh ever having fallen down on any job of ship repair work?

A. I have not.

Q. Did you know anything about the repair of the steamer "Elder"?

(Deposition of William Cornfoot.)

A. Slightly. I did some work on it.

Q. Do you know whether Mr. McIntosh had anything to do with the repair of that vessel?

A. Mr. McIntosh, at that time, was superintendent of the Port of Portland Drydock, on which dock she was repaired.

Q. Do you know whether he had active charge of any of her repair work?

A. No, sir, he had none. I can vouch for that.

Q. In making this bid to the Globe Navigation Company in the name of the Albina Engine & Machine Works, was it your intention or not your intention, to stand behind the responsibility of Mr. McIntosh. [39]

Mr. CLISE.—I object as incompetent, irrelevant and immaterial.

A. It certainly was my intention.

Q. At the time that the bid was made to the Globe Navigation Company, did you make any arrangements with a surety bonding company for the furnishing of the bond required by the specifications?

A. I did.

Q. With what company?

A. McCargar, Bates & Lively, in the Yeon Building, Portland, Oregon.

Q. Do you know what bonding company they represented?

A. The Aetna, I understood. They have my accident policies there, and it is in that company and I take it for granted that it was the same company. I don't know. They were responsible.

(Deposition of William Cornfoot.)

Q. In doing the repair work on these other vessels that you have named under bids, were you ever required to furnish bonds? A. Yes, sir.

Q. In doing the work for the Government were you required to furnish bonds? A. Yes, sir.

Q. Will you state whether or not you ever had any difficulty in procuring bonds from the bonding companies to guarantee your bids?

Mr. CLISE.—I object as incompetent, irrelevant and immaterial.

A. No, sir.

Q. Did you obtain any letter or document from the agents of the surety company which was delivered to the Globe Navigation Company respecting the issuance of a bond on the bid?

A. That was enclosed in the same envelope with the bid; yes, sir.

Q. Did you deliver that personally? [40]

A. No, sir; I delivered it to Mr. McIntosh and he delivered it personally.

Q. Was that letter ever returned to you?

A. No.

Q. I will hand you a letter and ask you what it is.

A. That is a copy of the letter that I had from McCargar, Bates & Lively in connection with the bond for the repairs on the "William Nottingham."

Mr. CAMPBELL.—I should like to offer this letter in evidence. If the original copy is in existence and in the possession of the Globe Navigation Company, we, of course, prefer to have that and introduce that in the record instead of the copy. If it

(Deposition of William Cornfoot.)

is necessary, I will call the agents of the surety company, if you people require it.

Mr. CLISE.—I won't object upon that ground. I will object upon the ground, at the present time, that this is not the best evidence, and I think that is the only objection; and incompetent, irrelevant and immaterial. And I am perfectly willing that you shall make your correction, if you wish, of that date at this time.

Mr. CAMPBELL.—Yes. That is, the copy of the letter is dated January 12, 1913, and it should be January 12, 1912, the difference between 1912 and 1913 being a typographical error.

Mr. CLISE.—Yes.

Mr. CAMPBELL.—And I will make the correction by putting the figure "2" above the "3" and drawing a line through the "3." We will ask for the production of the original letter, and I will offer this copy in evidence.

Thereupon said paper was marked Cornfoot Exhibit 2, and is attached to this deposition as a part of the same. [41]

Mr. CLISE.—Now, I wish you would read that last question where Mr. Cornfoot says what he did with that letter.

Thereupon the reporter read the following question and answer, to wit:

"Q. Did you deliver that personally?

"A. No, sir; I delivered it to Mr. McIntosh and he delivered it personally."

Mr. CLISE.—I move that so much of the reply

(Deposition of William Cornfoot.)

of Mr. Cornfoot as says what Mr. McIntosh did with the letter, be stricken as mere hearsay.

Mr. CAMPBELL.—I consent to that, and we will supplement the proof on the delivery of that letter by Mr. McIntosh's testimony.

Q. Did you have anything to do with the repair of the French ship "Asie"? A. No, sir.

Q. Did you recall that vessel being under repair in this report? A. No. I wasn't here then.

Q. Mr. Cornfoot, referring to your bids, I will ask you how much was included in your bid of twenty thousand nine hundred and fifty dollars for the stores of a consumable nature which were required to be furnished by the terms and conditions of the specifications on which the bid was based?

A. Cabin and crew stores, fifteen hundred dollars.

Q. Now, will you state whether or not those are stores of a consumable nature?

A. Yes. That was principally food stores and things pertaining to the galley.

Q. Will you state whether or not that included paints and oils? A. No.

Q. I will hand you the specifications, marked Cornfoot Exhibit 1, [42] and call your attention to the last two sheets, designated "List of stores required to replace those lost or damaged 'Wm. Nottingham' disaster, October, 1911," and ask you what part of those stores were covered by the fifteen hundred dollars which you just mentioned.

A. None; none of these. Oh, I beg your pardon; I spoke too quickly. These subsistence stores and

(Deposition of William Cornfoot.)

sundry items; these subsistence stores and these sundry items on the last page.

Q. Were included in the fifteen hundred dollars?

A. Yes.

Q. What about the slop chest?

A. Well, there was a thousand dollars to take care of cabin furniture and things of that kind, but this division of the stores I am not altogether sure of just at the present moment. Excuse me for looking back another page.

Q. Yes; go ahead.

A. I haven't seen these specifications since that time. I know I allowed twenty-five hundred dollars to cover all stores, and there was a thousand dollars for furniture and things pertaining to the ship, and these items, chandlery stores and perishable goods I allowed fifteen hundred dollars for.

Q. Now, to get this clear, your total allowance for all supplies to the ship, including cabin fittings, was how much?

A. Including fittings, twenty-five hundred dollars.

Q. And in the fifteen hundred dollars do I understand you to testify that you included the subsistence stores and sundry items, specified on the last two pages of the specifications?

A. Yes. I might—

Q. And what do you say about the chandlery stores?

A. I was going to say, I might have also included some of these [43] items in the other list there.

(Deposition of William Cornfoot.)

I could not give you item for item, now, on that point.

Q. Can you verify your recollection on that later?

A. Well, there was hose and hose connections. I might be able to do so, but I am afraid not. I unfortunately have destroyed most of my notes in my figuring up of this job. The people that I figured with, possibly, have done the same thing.

Q. What did you include in the one thousand dollars that you speak of as ship's furniture?

A. Well, there was bedding and there was chairs, and the cabin was all nicely done up and that had been all destroyed, and knickknacks and things of that kind.

Q. Were those matters called to be supplied by these specifications?

A. Had to be put into condition the same as it had been.

Q. And you say you allowed a thousand dollars for those items?

A. Yes, sir, the furniture and fixtures.

Q. If the chandlery stores and the slop chest were not included in the allowance of twenty-five hundred dollars under your bid as covering stores and supplies, under what other portion of the bid would they have been included?

Mr. CLISE.—I object to the question, upon the ground that the witness has testified that they were included therein, and that the question is leading and suggestive.

Mr. CAMPBELL.—I didn't understand clearly

(Deposition of William Cornfoot.)

that he had testified.

Q. Then I understand the twenty-five hundred dollars included all stores and—

A. (Interrupting.) All stores and fixtures.

Q. (Continuing.) All stores and supplies and cabin fixtures? [44] A. Yes.

Q. And cabin fixtures and furniture and fittings you estimated at one thousand dollars? A. Yes.

Mr. CAMPBELL.—That is all with Mr. Cornfoot.

Cross-examination by Mr. CLISE.

Q. Mr. Cornfoot, if I understand, you are a sole trader doing business under the name of the Albina Engine & Machine Works? A. Yes, sir.

Q. And you were, in January, 1912?

A. Yes, sir.

Q. That was about the time you commenced business?

A. Oh, no. I have been in business for ten years.

Q. Under that same name?

A. Nine years in Portland.

Q. Under that same name?

A. Well, I did business under my own personal name for about three years. Then I formed the Albina Engine & Machine Works.

Q. Since that time?

A. That is about six years ago.

Q. Now, I understand your works are principally relating to engines and steel work and iron work, and matters of that kind?

A. General repair work of all kinds.

Q. Including wood work?

(Deposition of William Cornfoot.)

A. No, I dont touch wood work personally.

Q. No; that you always place in the hands of someone else? A. Yes.

Q. Generally Mr. McIntosh? A. Yes. [45]

Q. Now, how did you come to put in this bid on this work. How was the matter called to your attention?

A. There was bids called for, and I had a copy—I got a copy of the specifications and bid on them.

Q. How did you happen to get that? How was the matter called to your attention?

A. Well, I knew the ship was to be repaired, and I was around to get a copy of the specifications, and I met Captain Swensen and I got a copy of the specifications from Captain Swensen.

Q. Did Captain Crowe ever talk to you with regard to this? A. No, sir.

Q. Now, do you think that you handed this bid to Mr. McIntosh, or did you hand it to Mr. Thorndyke yourself? A. I gave it to Mr. McIntosh.

Q. Did you have some conversation with Mr. Thorndyke on or about the time the bid was presented?

A. I met Mr. Thorndyke that afternoon after the bids had been opened.

Q. And that was the time when you told him that Mr. McIntosh would do the woodwork and that you would only look after what small amount of iron work there might be? A. Small work?

Q. Yes.

A. Mr. McIntosh was right with me; yes.

(Deposition of William Cornfoot.)

Q. Yes, but that is the time when you made this statement to him? A. Yes.

Q. Now, the Dollar steamers are steel steamers, are they not? A. Yes.

Q. And so are the Government boats all steel vessels? A. Yes, principally. [46]

Q. Yes; all the Government boats that you mentioned were steel boats, were they not?

A. Yes. I have also done work on the "Orago." She is a wooden vessel. Also on the "George H. Mandell." She is a wooden vessel.

Q. When did you do work on those two boats?

A. This year.

Q. This year?

A. Yes. I riveted the schooner "Minnie E. Kelton" here. That is an old one, anyway; that is an old shell; last year.

Q. Last year. That is, since January, 1912?

A. Yes. Last year I did that.

Q. Now, the "San Jacinto," that is a steamer, too, is it? A. Yes.

Q. And the work that you did yourself, I suppose related to the engines?

A. Engines and boilers and machinery.

Q. And machinery; yes. What kind of a ship is the "Acme"? A. The "Acme" is a steel ship.

Mr. CLISE.—That is all.

Redirect Examination by Mr. CAMPBELL.

Q. Did Mr. McIntosh join you on any part of the work on the "Minnie E. Kelton" or "Mandell"?

(Deposition of William Cornfoot.)

A. No; that was done by Supple under a separate bid.

Q. Under a separate bid? A. Yes.

Q. What was the "Mandell," what type of vessel?

A. She is a wooden vessel. I simply changed her wheel. I suppose that is not pertaining to wood-work. [47]

Q. Did you have any conversation with Mr. Thorndyke at the time that you met him?

A. Yes, I had a small conversation with him that afternoon.

Q. State what that conversation was.

A. Well, I could not say it word for word, but I met Mr. Thorndyke up in the Oregon Hotel and Mr. McIntosh introduced me as Mr. Cornfoot, the proprietor of the Albina Engine & Machine Works, and that our bid had been the lowest, and Mr. Thorndyke said to me that our bid would receive proper—now, what was the word?—that it would be properly considered; that was it; and that he thought that we would do the work. That remark was also passed at the time.

Q. Did Mr. Thorndyke make any objection to Mr. McIntosh joining with you in the work under your bid? A. No, sir.

Q. How did you obtain the values on the stores and furniture and fittings?

A. Well, I put in quite a bit of time going around here for to get prices on them and these cabin stores, table goods and things. I got a price from them people down here, Wadhams-Kerr, on them, and on the

(Deposition of William Cornfoot.)

other, furniture and things of that kind, the dishes, I went to Meier & Frank's, and I went to M. Sellers & Company and got prices from them on the different articles.

Q. Are these firms you mention Portland firms?

A. Yes, sir.

Q. Did you ever have any subsequent conversation with anyone connected with the Globe Navigation Company, following your interview with Mr. Thorn-dyke?

A. Not except Captain Swenson; I met him once or twice. [48]

Q. Any conversation ever passed between you?

A. No, not very much particular conversation; only just wondering why the job wasn't awarded; that is all.

Mr. CAMPBELL.—That is all.

WITNESS.—Perhaps I made a mistake about the "Orago" being one of the vessels; I have worked on so many.

Mr. CAMPBELL.—You say that you made a mistake about the name of the "Orago"? A. Yes.

Q. If it was not the "Orago," what vessel was it?

A. Well, I don't know. I have done work on so many of them, I am kind of mixed up.

Q. Have you ever fallen down on any job of repairs that you have undertaken?

A. No, I don't think so. I never had any fights or disputes, or anything of that kind.

AND FURTHER DEPONENT SAITH NOT.

Signature waived. [49]

[Deposition of **Robert McIntosh**, for Respondent.]

ROBERT McINTOSH was thereupon produced as a witness on behalf of the respondent, and, having been first sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. How old are you, Mr. McIntosh?

A. Fifty-eight.

Q. Where do you live?

A. 980 Savier Street, Portland.

Q. What is your business?

A. Ship carpenter, contractor, calker, rigger.

Q. How long have you been engaged in the business of ship repairing? A. Thirty years.

Q. How long have you been in that business in the port of Portland? A. All the time; thirty years.

Q. Did you have anything to do—

A. (Interrupting.) No; excuse me. I was superintendent of the Port of Portland Drydock for five and a half years out of that time.

Q. What do you mean by saying that you were superintendent of the Port of Portland Drydock?

A. I was appointed by the Port of Portland Commission to take charge of the dock, and I was sent to New York to see how they arranged things there and came back and when the dock was finished, I took charge of it, docked the first ship that was ever put in it and run it for five years and a half under my superintendence and charge entirely. [50]

Q. Who had charge of it?

(Deposition of Robert McIntosh.)

A. No manager. I was the managing superintendent.

Q. Yes. Who had charge of the construction of the dock?

A. It was constructed by a contractor named Wakefield.

Q. Have you ever repaired any vessels?

A. Yes, sir, a good many.

Q. Have you ever repaired any vessels which required a repair similar in character to that which you proposed to put on the steamer "Wm. Nottingham" under the specifications on which the Albina Engine & Machine Works' bid was made?

A. Yes, sir.

Q. How many vessels approximately would you say that you had repaired during your experience in the Port of Portland?

A. That is on the drydock, you mean?

Q. No. A. Oh, all the time?

Q. All the time while you have been in the ship repairing business in Portland.

A. Oh, my gracious! I don't know. Five hundred. That is an approximate estimate. More than that, but that is enough.

Q. It has been testified in this case, as I recall the testimony, that you fell down, or words to that effect, on the repair of the steamer "Elder." Will you state whether or not that was true?

A. I had nothing to do with the "Elder." I was superintendent of the drydock. I had nothing in the world to do with the "Elder," only docking her. I

(Deposition of Robert McIntosh.)

got a present of a diamond pin from the owner for docking her in such a satisfactory manner, without injuring her.

Q. Where did the "Elder" get into trouble which afterwards necessitated her being docked? [51]

A. She went ashore on a rock down close to Globe, about thirty-five or forty miles down the river here, going down, bound for San Francisco.

Q. Was she afterwards raised?

A. She was raised; yes.

Q. And where was she taken for repair?

A. The Port of Portland Drydock.

Q. At St. Johns? A. At St. Johns; yes.

Q. What did you have to do with her at the Port of Portland?

A. I had to get her in shape, keep her in line, see that she didn't break any worse than she was, shore her up, arrange the keel and bilge blocks in such a manner that it would take an equal strain all over, because she was broken.

Q. What was that incident to, the repair or docking the vessel? A. Incident to the docking only.

Q. What was the condition of the "Elder" when you docked her?

A. There was a hole in her fifty feet long and eight feet high; from one part of the keel forward fifty feet aft was bent in a circle eight feet six inches high, twelve feet from the bottom of the dock; and her starboard plates were gone for that fifty feet up to above the turn of the bilge on the port side—on the starboard side. The port was something similar.

(Deposition of Robert McIntosh.)

The forefoot was gone. Aft hull was intact.

Q. What can you say as to the nature of the task in docking that vessel?

A. It was a difficult task; a very great deal of judgment required in doing it without hurting the ship and then bringing a suit for damages against the dock if she wasn't docked properly. I was responsible for that [52]

Q. Do you know of any complaint having been made as to the way the work of docking was done by you? A. No, sir.

Q. Was any recognition made to you by the owners of the "Elder" for the work that was done?

A. Yes, sir.

Q. In what way?

A. He gave me a present of a diamond pin on the seventh day of July, after the vessel was docked, my birthday.

Q. Have you ever, so to speak, fallen down on a job of repairs in the Port of Portland?

A. No, sir. In the dock, you mean?

Q. Not on the dock, but in repairing vessels.

A. When you say Port of Portland you mean Portland?

Q. Yes; I don't mean under the Commission.

A. When you say Port of Portland that means the Commission of the Port of Portland. Just say Portland, and then I will understand you better.

Q. All right.

A. Then I had some trouble with the "Shna-Yak."

Q. What type of vessel was she?

(Deposition of Robert McIntosh.)

A. She was a steam schooner, wooden vessel.

Q. What was the trouble with her?

A. She had been ashore somewhere onto a bar, or somewhere; I don't know where. Part of her keel was gone and her forefoot was partly damaged. She was pretty badly strained around the engine-room and aft. I don't think there was anything the matter with the rudder. We calked her and put a new piece of keel on her, a piece fore and aft, and refastened her aft around the pointers, stringers and breast-plates. [53]

Q. In what respect did you have difficulty with that piece of work?

A. There was very little financial trouble there. I had a partner who failed to keep up his end. He was to produce half of the money, and he failed to do it, so I threwed the thing onto the hands of the insurance people. The Captain then paid up all the bills and had a balance of one hundred and twelve dollars left when I was through; so there was no financial difficulty about it any more than that. To get rid of my partner I done so.

Q. Was any complaint made to you about the character of the work that you did upon her?

A. No, sir. After she was undocked, it was found she was leaking, and we put her back in the dock again, and fixed the leak, which happens frequently. No complaint about the work, not a particle.

Q. Did you ever have any other trouble in the character of the work, or completing a job which you undertook as a ship repairer in Portland?

(Deposition of Robert McIntosh.)

A. Never; never, sir.

Q. Or any other place? A. No, sir.

Q. Either financially, or—

A. (Interrupting.) Financially, or any other way.

Q. Or by reason of the nature of the work?

A. No, not any.

Q. Will you give me the names of some of the vessels on which you did work similar to the character of repair work required on the “Nottingham,” which you were to perform?

A. Lately the job that came most near like that was the French ship “Asie,” which had three masts knocked out. She was a four-masted [54] ship. Three of them was knocked out. That was a steel vessel. And of the “Tillie E. Starbuck.”

Q. What was the nature of the work that you did on the “Asie”?

A. Rigged her; rerigged her, and done all the carpenter work that was damaged; calked her decks, put new ceiling in her, and otherwise done all the general work about her; whatever necessary furniture and linoleum and similar to these specifications here, stores and all that kind of thing, eggs and wine and tobacco and everything.

Q. How much did that job amount to, in dollars and cents?

A. The contract price was thirty-two thousand dollars, and the calking of the deck wasn't included in that price; and the ceiling wasn't, the new ceiling wasn't included. It amounted to about forty-eight thousand dollars altogether.

(Deposition of Robert McIntosh.)

Q. Did you have any difficulty in making or completing that job? A. No, sir, not a particle.

Q. Was any complaint made?

A. Not a complaint. The best ship ever went out of Portland. A new ship, the captain said; a new ship.

Q. Now, you mentioned the "Tillie E. Starbuck." What was the work done on her?

A. You see, I made the spars for the "Tillie E. Starbuck," duplicated them three times, all the spars on the "Tillie E. Starbuck,"—all but the lower masts.

Mr. CLISE.—Is she wood or iron?

Q. (Mr. CAMPBELL.) She was a steel vessel, wasn't she?

A. Yes. I put new spars in the "Olive S. Southerd," a wooden ship.

Q. Wait until we finish with the "Starbuck." Wherein was the character of the work which you did on the "Asie" different from the work which you would have done on the "Nottingham" under your bid? [55]

A. The only difference would be in outside calking. That would be the only difference, nothing more or less; and the woodwork on the keel, whatever I was to do there, That was the only difference.

Q. How did the replacing of the masts and the re-rigging and furnishing of sails to the "Asie" differ from that which would have been required on the "Nottingham"?

A. Nothing whatever, only the rigging of the "Asie" would be heavier; that would be all; larger in

(Deposition of Robert McIntosh.)

diameter, larger sails, and so forth, and wire rigging.

Q. What was the next vessel you mentioned?

A. "Olive S. Southerd."

Q. What character of vessel was she?

A. A wooden vessel, American vessel.

Q. How many masts?

A. Three masts, bark-rigged.

Q. What was the damage to her?

A. Broken mainmast.

Q. What work did you do on her?

A. Put a new mainmast in her, calked her topsides, calked her deck. There was no drydock here then.

Q. Wherein was the work of refitting and re-rigging her mast different from that of the "Nottingham"?

A. More of it, because she was square rigged. She had six yards in the mast, where this one had none—or five yards, rather, on the mast.

Q. What other vessels have you repaired?

A. Similar to that?

Q. Was the "Southerd" a wooden vessel?

A. A wooden vessel. Yes. I am picking out wooden vessels now [56] for you.

Q. All right.

A. "Indiana"; "Sea King"; I am giving wooden vessels now, so it will be correct; and I don't know any more just now; I can't think of them all.

Q. What was the nature of the repairs?

A. Rigging and spars and calking. Those are all wooden vessels.

(Deposition of Robert McIntosh.)

Q. Were they dismasted vessels also?

A. Partly.

Q. What other style vessels have you repaired, on which the rigging was similar to that required on the "Nottingham"?

A. Last January Mr. Cornfoot and I repaired the bark "Inverclyde," a steel vessel; took the bowsprit out, and put it back again after rebuilding it. That is the latest. The "Roanoke," a steel vessel; I took the foremast out of her and put a new one in. She is a steel vessel, local vessel.

Q. That is a steamship? A. Yes, a steamship.

Q. Do you recall any others now?

A. Rigging jobs? No; I can't recall any. I think that is enough. Isn't that plenty, or do you want some more?

Q. No. We want to qualify you.

A. Well, I think I am qualified now.

Q. Mr. Cornfoot mentioned your having joined with him in the repairs of the "San Jacinto"?

A. Yes, sir. Well, that was a separate job. He done the engine work and I made a contract direct with Mr. Thayer for the wood part of the work; Mr. Thayer, the managing owner of the E. K. Wood Lumber Company.

Q. Does Mr. Thayer live in San Francisco? [57]

A. Yes.

Q. What was the nature of the work that you did on the "San Jacinto"?

A. New keel the whole length of her, all new plank on both sides up to the nine or ten-foot mark, new

(Deposition of Robert McIntosh.)

rudder-post, new stern-post, new rudder, a new fore foot; calked her; generally new all over from bilge down; new frames.

Q. Do you know whether or not the E. K. Wood Lumber Company is the owner of other vessels?

A. Yes; they own several vessels. I don't know the names of them.

Q. What has been the nature of the work that you have done with Mr. Cornfoot on the Government vessels?

A. We done the work on the Government vessels, on the "Columbine," "Number Eighty-eight Lightship," and I forget the number of the other one. We done work on three lightships altogether.

Q. Ninety-seven?

A. Ninety-seven, was it? We done work on three lightships, I think; the "Columbine" and the "James Fornance"—

Q. How do you spell that? A. F-o-r-n-a-n-c-e.

Q. What is she, wooden or steel vessel?

A. She is steel.

Q. What has been the nature of the work you have done on those vessels?

A. Carpenter work around the deck and engine-room, bulkhead, doors, and things of that kind, and cleaned the bottoms and painted them. Lightship work, I repaired number fifty myself. She was a composite built vessel. I repaired her several times; [58] new planking and sheathed her over one time from the water up to the gunwale; altered her state-rooms. She is now a relief ship. She is not on the

(Deposition of Robert McIntosh.)

station any more.

Q. A lightship, is she?

A. Yes. I fell down on that job. They had to take her off of the beach. The company took her off and failed, lost ten thousand dollars; but the Government didn't lose anything. There was no cure, no pay.

Q. Where was she beached?

A. McKinzie Head, three miles north of Cape Disappointment.

Q. At the entrance to Columbia River?

A. Yes, sir.

Q. On what kind of beach?

A. Sand beach and several rocks on it; but she was in a sandy beach.

Q. Was her position exposed or sheltered?

A. Exposed.

Q. Exposed to what waters?

A. To the current westerly, southwest winds.

Q. Of what waters? A. The Pacific Ocean.

Q. Have you had any experience in repairing the bottoms of vessels in Portland before the days of drydocks? A. Yes.

Q. What has been the nature of your experience in that respect?

A. I hove them down, turned them bottom up. I turned the "Cheeseboro" upside down, turned the keel out of water, put sixty feet of new keel on her, calked her, recoppered her; her tonnage was fifteen hundred and fifty tons, a wooden ship.

Q. How many masts? [59]

(Deposition of Robert McIntosh.)

A. Three masts, full-rigged ship. The bark "Director," I done the same thing to her.

Q. How would you turn those vessels down?

A. I secured the lower masts with shores to the deck and put cables to the opposite side and hove her down to a barge afloat with heavy tackles, tackles with five-inch rope and four-fold blocks.

Q. What did you do to the "Director"?

A. The same thing, with the exception of the keel. Stripped her copper off, calked her and recoppered her. And another ship I repaired with a cofferdam, the ship "Seaforth." I put a new plate on the bottom, repaired her stern post, which was broken, and her garboard strake aft, and repaired her rudder.

Q. What did you say about a cofferdam?

A. That was done with a cofferdam underneath the vessel's bottom, forty feet long.

Q. What do you mean by a cofferdam?

A. It is a box you make and fit around the vessel's sides, and then pump the water out, and it is a small drydock then as far as it goes. The steamer "Wilmington," I done the same thing, and done something I never heard of being done. I put a cofferdam up to the keel on one side and in the middle of her put a new plate in the bottom twenty feet long.

Q. Now, getting back to the "Nottingham," will you state whether or not you are the Robert McIntosh that Mr. Cornfoot mentioned in his testimony as the one who was to join with him in making the re-

(Deposition of Robert McIntosh.)

pairs to the "Nottingham" under Mr. Cornfoot's bid? A. I am.

Q. Did you have a copy of the specifications?

A. This is my copy (indicating).

Q. The one which has been introduced in evidence as Cornfoot [60] Exhibit 1?

A. Mr. Cornfoot's copy was included in the bid. That is my original copy.

Q. Who delivered the bid? A. I did.

Q. To whom? A. Mr. Thorndyke.

Q. Did you have any conversation with him at that time?

A. We had a little joking conversation about one *thing another*; nothing to speak of. He wanted to know if this bid was all right. I said it was. He wanted to know who Mr. Cornfoot was. I told him he was engaged, but he could see him in the afternoon. And we saw him in the afternoon. Mr. Thorndyke was going away that afternoon and I took Mr. Cornfoot around; and the agent for the bonding company was there at the time ready to sign any bond that was brought forward, if it was necessary.

Q. Will you state whether or not a letter was delivered with the bid to Mr. Thorndyke from the bonding company? A. I enclosed it myself.

Q. Well, was it, or was it not, delivered to Mr. Thorndyke?

A. It was delivered to Mr. Thorndyke.

Q. Will you look at Cornfoot Exhibit 2, and state whether or not the exhibit is a copy of that letter?

A. Yes. And more than that, I read that, the

(Deposition of Robert McIntosh.)

same as that, the original letter up in the office of McCargar, Bates & Lively. That was correct.

Q. Was the letter that you delivered to Mr. Thorn-dyke ever returned to you? A. No, sir. [61]

Q. What part of the work called for by the specifications were you to do under the Albina Engine & Machine Works' bid?

A. Well, it is pretty hard to segregate that now.

Q. Generally speaking?

A. Well, it was all the woodwork, all the painting, all the fastening, all the calking, all the rigging; and that was my part.

Q. What about the masts?

A. The masts; that incudes the masts, the three masts, top mast and rigging.

Q. What part was Mr. Cornfoot to do?

A. His part was to do all the iron work connected with the rigging work, chain plates, turn buckles, chains of all kinds, furniture, stores and machinery work and donkey-engine, and whatever else was to do, ring-bolts, and everything like that; all iron work connected with the masts and spars; that means everything, chain plates and all the rest of it.

Q. What equipment did you have of the equipment which would be required to do the work on the "Nottingham"?

A. I had all the equipment necessary to do the work on the "Nottingham," or any ship that is in the Port of Portland now, or that might ever come in here, to put rigging on her in the shape of blocks and ropes and tackle of all kinds, screws, everything.

(Deposition of Robert McIntosh.)

Q. What about tools?

A. I have all the tools, all the calking tools; the men furnish all other calking tools except the hawsing irons and beetles. I have got all the hawsing irons and beetles necessary to calk a ship.

Q. What about the carpenter's tools?

A. The carpenter's tools, I have got all of them; jack-screws and clamp-screws and crowbars, turn-buckles, or, rather, call them drawing-spikes—everything. [62]

Q. Of the equipment that you did not have, what would be required to do that work?

A. The only equipment I didn't have we could get at the Port of Portland Drydock, or the Albina derrick; that is to take the sticks out and put them in. The Port of Portland derrick. I put that up myself; it will lift any stick the vessel had.

Q. What do you mean by stick, mast?

A. Mast; yes; right at the dock; didn't need to move away from the dock.

Q. What do you call that gear, sheers, or what?

A. No. This is a derrick gear, boom derrick.

Q. Where did you propose to do the repair work on the "Nottingham"? A. Right at St. Johns.

Q. At what plant?

A. At the Port of Portland, where you get free wharfage if your ship has been docked. That is, after she has been off of the dock, you don't. While you are waiting to go on the dock you get free wharfage.

Q. Will you state whether or not you planned to

(Deposition of Robert McIntosh.)

put her on the Port of Portland Drydock, as called for by the specifications? A. Yes, sir.

Q. What preparations, if any, did you make to undertake the repairs called for by the specifications under your bid?

A. I made all the preparations by going and finding out, getting estimates for all the work that was to be done there, that we had to furnish; sails, boats; I telegraphed to San Francisco and wrote to Seattle to get the price on boats there through the advice of people that were better acquainted than I was. I got prices on boats from both places. There was two boats to be furnished. I got prices on sails from the Willamette Awning & Tent [63] Company; all wire rigging furnished by the Roebling Company, Roebling & Sons; all my running gear was furnished by the Honeyman Hardware Company; all my rope and blocks were furnished by them at the price stated.

Q. In what manner do you prepare the wire rigging?

A. Well, you have got to serve it, or parcel it with canvas and serve it.

Q. Where did you propose to do that work?

A. Right at the drydock, on the wharf, or probably in the ship's hold. The chances are it would have been in the ship's hold.

Q. Did you have the equipment necessary for that? A. Yes, sir.

Q. Did you, at any time, make any inspection of any wires or rigging with the master of this vessel

(Deposition of Robert McIntosh.)

which might be required to carry out your bid?

A. I didn't quite understand that.

Q. Did you, at any time, make any inspection with Captain Swenson of the "Nottingham," of the wires or rigging that would be required to carry out the repairs?

A. Well, I met Captain Swenson nearly every day, and we was talking about the job so often that it came to be this way: "When you start that job," he always said, "I want so-and-so, Mack; I want this done and that done."

Q. We don't care about the conversation with him.

A. "I would like to have the service so; I would like to have the rounding so."

Mr. CLISE.—I object to the witness detailing conversation with other parties.

Mr. CAMPBELL.—Yes, but he is detailing it with your agent.

Mr. CLISE.—It doesn't make any difference who.

WITNESS.—We went over to the ship chandlers, too; we looked [64] at the parceling—not the parceling, the spun-yarn for the service; and he was very particular to see everything was all right before he would have it used. The rope he spoke about frequently.

Q. Did you inspect any rope with him?

A. Well, we looked at it in the shop when we were there. There was several open coils there, and we were comparing one with the other, the New Bedford rope and the Portland Cordage Company rope; he said one was equally as good as the other.

(Deposition of Robert McIntosh.)

Q. Did you inspect any wires?

A. No, we didn't inspect any wires.

Q. Now, what, if anything, did you do in preparation of the masts?

A. I got estimates from the North Pacific Lumber Company, which was the lowest, and several others, which you have got there now; from Mr. Mackay, the president of the North Pacific Lumber Company, for three lower masts and four other spars, or three other spars; the others I had myself.

Q. Did you make any preparation for the working, or for the turning up of the masts?

A. No; that would be all hewed with an axe.

Q. Where did you propose to do that work?

A. Right at the drydock.

Q. Will you state whether or not there was the necessary equipment on hand?

A. The necessary equipment, yes; I have made several down there, a good many.

Q. Now, Mr. McIntosh, of the bid of \$20,950 of the Albina Engine & Machine Works, I want to ask you how much you figured as the cost of drydocking the vessel, including the cost of towing the vessel to and from the drydock? [65]

A. Well, there was the dock dues. I think the drydock dues were three hundred and eighty-two dollars. I haven't got that paper here. I have got it all marked down there, haven't I? I can't recollect without seeing it. These are my original figures there. That is the paper there (indicating).

Q. Have you with you your original figures?

(Deposition of Robert McIntosh.)

A. There are my original figures here (indicating).

Q. When did you make up your figures?

A. These figures were all made up previous to the bids being tendered.

Q. In preparation for the bid?

A. In preparation for the bid; yes, sir.

Q. Now, will you answer the question that I asked you, please? A. Which was that?

Q. How much of the Albina Engine & Machine Works' bid did you figure as the cost of drydocking the vessel, including the cost of towing her to and from the drydock?

A. Three hundred and eighty-two dollars was the cost of drydock, and the moving would only be the hauling of the ship into the dock. I don't know what that would be exactly.

Q. Where was she at the time?

A. Right alongside at the end of the floating dock, the wharf.

Q. Now, how many days' labor did you figure under your bid for the work on the bottom requiring the vessel to be on the drydock, exclusive of calkers and cementers? A. Twenty-five men one day.

Q. That is, it would take twenty-five men one day?

A. Yes.

Q. To do the work on the bottom, outside of the calkers and the [66] cementers?

A. Outside of the calkers and the cementers, yes.

Q. How many days' labor is that?

A. Well, figuring at five dollars per day.

(Deposition of Robert McIntosh.)

Q. No, I don't mean the value of it; I mean how many days' labor. How many days' labor would you say that was? How do you speak of it in ship parlance?

A. We put that as twenty-five days, one man.

Q. Is that in doing the work called for by the specifications? A. Yes.

Q. How many days' labor did you figure on under your bid for painting the bottom? A. Thirty.

Q. That is to say—

A. (Interrupting.) Thirty days for one man.

Q. How many coats of paint did that require?

A. Two coats.

Q. What character of paint?

A. Woolsey's copper paint.

Q. Was that in accordance with the requirements of the specifications?

A. That is what was called for; yes, sir.

Q. What did you figure the total cost of the paint plus the labor on the ship's bottom?

A. Well, there is a hundred and eighty—would be two hundred and eighty—three hundred and eighty; a hundred and eighty for the paint, ten cases, and a hundred and fifty.

Q. How much, you say, for the paint?

A. Ten cases, eighteen dollars a case, one hundred and eighty, and that would be two hundred and eighty; that would be three hundred and eighty—three hundred and eighty dollars. [67]

Q. I think your addition is wrong. It would be three thirty, wouldn't it?

(Deposition of Robert McIntosh.)

A. No. A hundred and eighty—two hundred and eighty—yes; three thirty; that is right; three hundred and thirty.

Q. How many days' labor did you figure under your bid for the calking and cementing of the seams and butts and hood ends in the bottom, including the cement?

A. Thirty-five days; one man thirty-five days.

Q. How much did you figure under your bid would be the cost for the labor you have just mentioned, the oakum, calkers, cement and oil?

A. About one hundred and forty dollars; about thirty-five dollars for material and—yes, that would be about right. Thirty-five dollars for material.

Q. How much for the labor?

A. Labor, one hundred and forty, which makes one hundred and seventy-five.

Mr. CAMPBELL.—That is all.

Cross-examination by Mr. CLISE.

Q. Mr. McIntosh, did the Port of Portland build a drydock for itself under contract or did they buy it from someone else?

A. The Port of Portland built a drydock.

Q. Yes; did they build the drydock at St. Johns?

A. The drydock was built in the year 1902 and went in operation in April, 1902. It was built at Vancouver, in Washington, by the City of Portland and County of Multnomah.

Q. And then brought—

A. (Interrupting.) Brought and placed here, at a cost of three [68] hundred and sixty-eight thou-

(Deposition of Robert McIntosh.)

sand dollars exclusive of the machinery and the location.

Q. It has then been always under their ownership and control, has it?

A. It has been under the City of Portland's control. I believe Portland owns it.

Q. And do they furnish free dockage to anyone and everyone?

A. They don't furnish free dockage to anyone, only the fire boats and the pilot schooner.

Q. I understood you to say you would get free dockage?

A. No, sir; I said wharfage if your ship was going in the dock.

Q. But you got free wharfage?

A. Free wharfage while you are waiting for the dock. After you came off of the dock, you will be paying a dollar per day per thousand tons—a dollar and a half a day. No wharfage dues until after she came off of the dock.

Q. So you would be compelled to pay wharfage fees?

A. That would be a dollar and a half a day for the "Nottingham."

Q. All the time after she came off of the dock?

A. All the time after she same off of the dock; maybe two dollars. It would be anything over a thousand, a thousand or over.

Q. You mean that a vessel of a thousand tons or over would pay two dollars a day?

A. Yes; one thousand tons would be one dollar;

(Deposition of Robert McIntosh.)

anything over, a fraction over, would be two dollars per day.

Q. It don't make any difference what kind of vessel?

A. What kind of vessel, steamer, craft of any kind, except scows; they don't let them lay alongside of the dock.

Q. When did you leave the employ of the drydock of the Port of Portland Commission? [69]

A. 1909; in December, 1909.

Q. Was that about the time that the "Elder" docked?

A. No, sir; the "Elder" was docked three years before that—four years.

Q. Now, you spoke of doing some work on a vessel called the "San Jacinto"? A. Yes, sir.

Q. When was that?

A. That was January, two years ago last January, I think; two years ago last January, yes.

Q. That was January, 1910?

A. I think it was; yes.

Q. January, 1911?

A. 1911; yes, sir; I believe that was. That is two years; yes.

Q. Yes, January, 1911. Now, what is the difference between masts that are placed in these steel vessels that you have testified concerning and the "Nottingham"? Are the masts exactly similar?

A. Similar in size, only one is steel and it is hollow, and the other is wood and solid, put in exactly the same, with step the same way, rigged the same

(Deposition of Robert McIntosh.)

way, only one is iron or steel and the other one is wood.

Q. What was the length of the mainmast of the "Nottingham"?

A. One hundred and nine feet and some inches. One hundred and twelve feet I figured on for cutting the sticks. We always allow something for cutting off the ends to get a good sound end. The approximate length is one hundred and twelve feet, I think.

Q. Now, you have spoken of the "Indiana" and the "Sea King." How were they rigged compared with the "Nottingham"?

A. Well, there was a difference. Well, the topmast and the gallant mast, and the "Nottingham" had only a topmast and lower mast. [70] They had three masts in one. They had a lower mast, topmast, gallant mast and royal mast. That makes three pieces; and then the yards on each one of these masts: main yard, lower topsail yard, upper topsail yard, main top gallant yard, upper top gallant yard and royal yard. That is the difference. There is five or six yards difference. The "Nottingham" is a fore and aft rigged vessel, and the other is a square-rigged.

Q. Now, when it comes to comparing the amount of work that you were going to do on the "Nottingham" and the amount Mr. Cornfoot was going to do, about what percentage of the total work were you going to do? A. Mine would be about two-thirds.

Q. Wouldn't it be a great deal more than that? Wouldn't it be about ninety per cent?

(Deposition of Robert McIntosh.)

A. Oh, no; no, no. Mine was fourteen thousand and something, and his bid was twenty thousand nine hundred and fifty. I think I have got it right here what it was. It was fourteen thousand something, anyhow, because he had all the furniture and things to furnish there. I don't know whether I have got it here or not. My proportion was fourteen thousand and some hundred dollars, to twenty thousand nine hundred and fifty. That was the proportion. That would be about two-thirds, wouldn't it? Between fourteen and twenty-one; that is what it is.

Q. How do the sails on these square-rigged vessels compare with the sails on the "Nottingham"?

A. Well, they are a different weight of canvas in some cases, and sometimes equally as heavy. The sails are made in a different shape. They are longer in the hoist, and they are shorter in the fore and aft way, the square sail.

Q. The square sail you are speaking of now? [71]

A. The square sail. The fore and aft sail has a great deal more hoist than a square sail has in a square-rigged vessel, but it is not so long fore and aft as it is across the ship of a square-sail vessel. The mainsail on a full-rigged ship, square-rigged ship, would be about eighty feet in length on the head and about eighty-five feet in the foot, and from eighteen to twenty-two or thirty feet deep.

Q. That is the mainsail? A. On a sailing ship.

Q. On a square-rigged—

A. (Interrupting.) On a square-rigged vessel.

Q. Now, how about the schooner?

(Deposition of Robert McIntosh.)

A. On a fore and aft schooner her hoist would be probably—

Q. (Interrupting.) Say, take the “Nottingham,” for instance.

A. I am just taking the “Nottingham.”

Q. Yes.

A. Now, let’s see. It would be eighteen, twelve, twenty, thirty—

Q. (Interrupting.) Hold on. He is just figuring. A. I am taking the hoist.

Q. I mean, don’t think out loud, because the reporter is taking this all down. Just think to yourself.

A. About sixty-five feet of a hoist; sixty to sixty-five feet; and fore and aft it would be—I am taking the mainsail, now.

Q. Yes.

A. Probably forty-five or fifty feet.

Q. What number of canvas would you use on the square-rig and on the schooner rig?

A. Well, it would be number nothing, or number one.

Q. Would you use the same on both? [72]

A. Yes. The mainsail on a square rigged vessel would not be so heavy as you would have; it would be a little lighter. It would be number one probably. Number one is a little heavier.

Q. So I understand, number one on the square rig and nothing on the schooner?

A. Well, it would depend on what sail it was, whether the fore sail or the mainsail. The fore sail

(Deposition of Robert McIntosh.)

on a square rig would be number nothing; the mainsail would be number one.

Q. We are speaking of the mainsail.

A. That would be according to the judgment of the managing owner what kind he wants to use, or the captain of the ship. On the fore and after you can use any canvas he wishes.

Q. What number of canvas do these specifications call for for the "Nottingham"?

A. Number nothing, I think.

Q. And it is usual to put number one on the square rig?

A. Well, they put both numbers, number one and number nothing. They can put either one they like. It depends altogether on the ships. And the purchasing agent has something to do with that sometimes, and other times the captains and the owners. But nothnig or number one, anyway; not less than number one.

Q. On the square rig?

A. On the square rig, or on the fore and after either.

Q. The "Asie" is a steel vessel, isn't she?

A. The "Asie"?

Q. Yes. A. Yes; a French steel vessel.

Q. Square-rigged?

A. Square-rigged, and three masts and jigger rigged on the fourth mast. [73]

Redirect Examination by Mr. CAMPBELL.

Q. What did you estimate in your bid as the cost of renewing the mast steps?

(Deposition of Robert McIntosh.)

A. I think it was one hundred and twenty dollars. New steps for three masts; there it is; one hundred and twenty dollars.

Q. Did you have the sail plans of the ship?

A. Yes, I had the sail plans, sure, and gave them to the—I went and figured out the sails with the sail-maker; that is, I showed him what sails we wanted, and everything, and left the sail plans with the foreman of the Willamette Tent & Awning Company and the other company here. Both of them had the plans.

Q. From whom did you obtain the sail plans?

A. From the captain. I got all the sail plans and everything, both the rigging and sail and mast plans all in one.

Q. Do you know whether they showed the weight of canvas?

A. No, I don't. They might have done that. We figured according to what was on the plan, number one and nothing. I guess it did show that; I am not sure.

Q. Did you discuss with the captain the sails?

A. No; no, I didn't.

Q. You said that the "Asie" was a steel vessel. What were her topmasts made of, steel?

A. Steel; yes; all in one piece; top mast and lower mast were all in one in that vessel, one hundred and thirteen feet long, or a hundred and thirty feet long.

Q. What were the character of her topgallant masts? A. Wood.

Q. And what would be the character of the yards?

(Deposition of Robert McIntosh.)

A. The lower yards, what we call the lower yards, the main yards and [74] topsail yards were iron or steel, and the others were wood, the topgallant and royal yards.

Q. Were wood. The specifications provide this: "Before ship is again placed in water, entire plank-ing of hull to be searched for leaks with hose on in-side."

A. Yes, sir; that is done frequently. We do that frequently if it is requested.

Q. Now, Mr. McIntosh, did you intend under your bid to do that? A. Yes, sir.

Q. If a leak had been developed in the ship's side by that test, will you state whether or not the correct-ing of that leak would have been done by you under your bid?

Mr. CLISE.—I object as incompetent, irrelevant and immaterial, and the specifications and bid will speak for themselves.

WITNESS.—Can I answer it?

Mr. CAMPBELL.—Yes.

A. Yes, sir.

Recross-examination by Mr. CLISE.

Q. You have got your original notes there, have you? A. That is them, right there (indicating).

Q. Will you please refer to them and tell me what bid you received for the sails.

A. Yes, sir. It is right here. This bid includes for the sail. It includes the sails, flags, tarpaulins, sail covers and mast coats, twenty-eight hundred dol-lars net.

(Deposition of Robert McIntosh.)

Q. What quality of canvas were you calling for there?

A. According to what the specifications called for.

Q. What the specifications called for? [75]

A. Yes, sir.

Q. Did you go over the vessel frequently with the Captain?

A. I did. I went over frequently, both after the bids were opened and before they were opened.

Q. Did you discover anything at that time that indicated that there was a leak?

Mr. CAMPBELL.—Now we object to this as not a proper recross-examination, and shall insist that counsel make this man his own witness.

Mr. CLISE.—I will withdraw the question. That is all.

AND FURTHER DEPONENT SAITH NOT.

Signature waived. [76]

**[Deposition of William Cornfoot, for Respondent
(Recalled).]**

WILLIAM CORNFOOT was thereupon recalled on behalf of the respondent and further testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. Mr. Cornfoot, do you recall having any conversation with Mr. Thorndyke at the Oregon Hotel in which the amount of your bid and the time under which the work was to be performed was discussed?

A. Yes, sir, that was spoken of.

Q. What was said between you as to the time?

A. Mr. Thorndyke asked if—

(Deposition of William Cornfoot.)

Mr. CLISE.—(Interrupting.) I object to the question, on the ground that unless it is part of the *res gestae* it is incompetent, irrelevant and immaterial.

Mr. CAMPBELL.—Well, will you admit that time was not material to the performance of this contract?

Mr. CLISE.—No, sir.

Mr. CAMPBELL.—Well, you state it in your call for the bids, that time is not a great issue herein.

Mr. CLISE.—Well, it can be considered, but I will just let that speak for itself.

Mr. CAMPBELL.—Q. You may state what was said between you.

A. Well, the subject was brought up about the time that ours was the highest, the longest time that was specified, and Mr. Thorndyke asked if the time could be reduced, and Mr. McIntosh was there at the same time as I was, and he said, yes, the time could be reduced, but it would increase the bid.

Q. What did you offer to reduce the time to, and how much did you offer to increase the bid for such reduction?

A. A thousand dollars was the amount of money that was spoken of [77] in the conversation; and the time, sixty-five days, was our original bid, I think. The time that was spoken of then, I think it was ten days that was spoken of being taken off the time.

Q. How did the time that was mentioned compare with the time of the bid of the St. Johns dock, the

(Testimony of William Cornfoot.)

next highest bid?

A. Their time was lower. I don't remember what their figures exactly were on the time.

Mr. CAMPBELL.—That is all.

Mr. CLISE.—That is all.

AND FURTHER DEPONENT SAITH NOT.

Signature waived. [78]

[Deposition of Robert McIntosh, for Respondent
(Recalled).]

ROBERT McINTOSH was thereupon recalled on behalf of the respondent, and, having been previously sworn, testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. Have you, Mr. McIntosh, any recollection of that conversation?

A. Yes, sir, I recollect it, but I don't remember the dates. We offered to reduce to the same amount of days that the St. Johns people bid on, at the increase of one thousand dollars.

Mr. CAMPBELL.—That is all.

Mr. CLISE.—That is all.

AND FURTHER DEPONENT SAITH NOT.

Signature waived. [79]

United States of America,

State of Oregon,

County of Multnomah,—ss.

I, Alva W. Person, a Notary Public in and for the State of Oregon, duly commissioned and sworn, hereby certify:

That on August 1st, 1912, at ten o'clock A. M., there appeared before me at the offices of Messrs.

(Deposition of Robert McIntosh.)

Wood, Montague & Hunt, Room 616 Spalding Building, in the City of Portland, County of Multnomah and State of Oregon, H. R. Clise, Proctor for Libellant, and Ira A. Campbell, Proctor for Respondent in the foregoing case, who thereupon entered into the stipulation appearing on page numbered 1 hereof, and thereupon and pursuant thereto William Cornfoot and Robert McIntosh were produced as witnesses on behalf of the respondent and were by me first sworn to testify to the truth, the whole truth and nothing but the truth, and were then examined and re-examined by Mr Campbell on behalf of the respondent and cross-examined by Mr. H. R. Clise on behalf of the libellant, and said examinations and the testimony of said witnesses were reduced to shorthand by me and thereafter by me transcribed into typewriting, and the foregoing transcript, pages numbered 1 to 50, both inclusive, contains a full and true record of all thereof.

I further certify that the two papers hereto attached and marked "Cornfoot Exhibit 1" and "Cornfoot Exhibit 2" and initialed by me, are the identical papers identified by the witness Cornfoot and offered in evidence.

I further certify that the signatures of said witnesses were waived by stipulation between said proctors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, this 12th day of August, 1913.

[Seal]

ALVA W. PERSON,
Notary Public for Oregon. [80]

**Cornfoot Exhibit 1 [Notice of Globe Navigation Co.
Ltd., to Bidders].**

GLOBE NAVIGATION COMPANY, LTD.

215-6 Globe Building.

Seattle, Wash.

Office of the Manager.

To Bidders: Schr. "Wm. Nottingham."

Owing to an agreement owners have with the Port of Portland Commission, the vessel must be docked on their floating dock at St. John's incident to necessary bottom repairs, therefore in making tender for this work, bidders must agree with the owners to carry out that arrangement, bidders of course paying all dockage and other costs.

Time is not the great issue herein; but owners will weigh difference in time submitted to be consumed for doing the work, therefore bids should plainly set forth the number of running days he will consume to do the work.

All bidders should submit with their tender a statement from a reliable indemnity company agreeing to furnish surety bonds in sum required in the specifications.

GLOBE NAVIGATION COMPANY, LTD.

GFT/CT.

Cornfoot Exhibit 1. A. W. P. [81]

**[Cornfoot Exhibit No. 2—Specifications for Repair
to Am. Schr. "William Nottingham."]**

SPECIFICATIONS

For Repairs to Am. Schr. "William Nottingham."

Tenders are hereby requested for making the fol-

lowing enumerated repairs and supplying all of the sails, stores, outfit and equipment contained in the list attached to this specification.

Vessel to be taken from where she now lies by the contractor and returned to same berth by him or them after all repairs are completed, contractor to pay all costs of removal and return.

It being the intention of the following specification to briefly describe the spars, running and standing rigging, iron work, sails, etc., necessary to place vessel in the same good condition as before the accident, therefore the contractor will be called upon to observe not only the letter but the spirit of the contract. The work called for under this contract to include the removal of the stumps of the old masts, the removal of the old chain plates and all work and labor necessary to install the new spars, iron work, running and standing rigging, sails, blocks, outfit, equipment and gear, and all rigging to be set up, seized off, served and sails bent in readiness to sail, to the satisfaction of the Master or owner's representative.

SPARS:

The new spars to consist of the following:

Mainmast and main topmast.

Mizzenmast and mizzen topmast.

Spankermast and spanker topmast.

Fore boom.

Main boom and gaff.

Mizzen boom and gaff.

Spanker boom.

1 Cargo gaff.

Crosstrees, trestletrees and spreaders for each of the three new masts.

New hardwood steps to be installed to each of the three new lower masts and new wedges and mast coats as before. [82]

Suitable protection boxes to be built in two parts over mast coats in the usual manner.

Length of lower masts about 112 feet over all.

Main mizzen and spanker masts are about 25" in diameter at the deck, 21½" at the spider bands and 23" at heel. Mast heads are about 13' long and squares 17½" and 13", length from heel to deck 18'.

IRON WORK:

To include all new chain plates for the three after masts, all new iron work necessary for the three after masts and topmasts, the overhaul and repairs of all existing bands and iron work that may be used again in re-rigging the vessel, including the iron work, on foremast, fore topmast, bowsprit and fore yard, also the removal and repairing or renewing the port fore topmast backstay turnbuckle and chain for same, and the chain plate and turnbuckle for after swifter to port lower rigging. NOTE: All chain plate bolts to be driven through and clinched over rings on inside.

STANDING RIGGING:

Fore royal stay to be renewed together with martingale guys on both sides and new martingale. The foretopmast rigging on both sides to be renewed together with turnbuckles. The turnbuckle for spring stay on foremast to be renewed, the port out-rigger on foremast to be replaced by new, also bail for fore throat halyards.

All fore rigging, head stays, etc., to be come up, eyes and nips to be turned out for examination and the whole reserved, set up and seized off as before, and any missing ratlines on fore rigging to be replaced by new.

All standing rigging to the main, mizzen and spanker masts to be entirely renewed, together with turnbuckles. The lower rigging to consist of four swiftners on each side of the main and mizzen, three on each side of the spanker, two topmast shrouds on each side [83] of the four topmasts and one topmast backstay on each side of the main, mizzen and spanker. The head stays, jumper stays and spring stays to be as shown on the sail plan supplied. The wire used to be galv. riggen of same size as that now on foremast, also the turnbuckles used to be same size as those now on fore rigging.

RUNNING RIGGING, BLOCKS, ETC.

The entire running rigging fore and aft to be replaced by new manila rope of first-class quality, of either the Portland Cordage Co. or the New Bedford make, all to be rove off in shipshape manner to the satisfaction of the master, who will give the contractor the size of rope required. The description of the blocks required, all of which are to be new, also to be obtained from the Master, the throat and peak halyard blocks to be 16" and all others in proportion. NOTE: All wire pennants except the square sail yard brace pennants to be served all over. The gaff topsail halyard runners to be served 25 ft. from clip hooks.

HULL REPAIRS:**FOKSLE HEAD:**

Rail on stbd. sidee to be refastened and two broken stanchions in way of same replaced by new.

Cast-iron chock in way of above damage to be replaced by new and graving piece to be fitted in buffalo rail in way of same.

One cleat for jib sheet to be replaced by new.

Side-light screens on both sides to be renewed and mouldings in way of fore chain plates renewed where damaged.

One glass deck light on port side to be replaced by new.

Four bulleyes to be renewed.

Iron hood over donkey-boiler to be replaced by new.

Scuttle for galley and galley smokestack to be renewed. [84]

Donkey-house scuttle lid to be repaired and refitted.

The quick work on port side to be refastened.

The covering board and nosing on after end of forecastle-head deck to be replaced by new.

UNDER FORECASTLE-HEAD:

Bulkhead and doors to galley to be entirely renewed; galley to be gutted out and all fittings such as drawers, bins, racks, dressers, etc., to be replaced by new.

The bulkhead on port side of donkey-room to be entirely renewed.

The cook's room and carpenter's room to be gutted out and refitted as before with two bunks in each

room, and bulkheads and doors to be renewed.

The wedges and coat for bowsprit to be replaced by new.

The coaming to forward scuttle to be refastened.

The door to boatswain's locker to be renewed.

The work bench in donkey-house and vice on same to be refastened.

The bulkhead right across after end of foksele to be refastened and refitted with new mouldings, corner pieces, windows, doors and frames.

The accommodations and lockers under forecastle-head to be thoroughly cleaned out, washed and painted as before, and the new work to receive three coats of good oil paint.

MACHINERY:

The donkey-boiler to be opened out, thoroughly scaled, any leaky rivets to be backed out and replaced by new and leaky seams to be calked and made tight.
[85]

Donkey-boiler to be filled up, closed and tested to one and a half times its working pressure.

New steam gauge and water gauge to be fitted to boiler. Piping to be overhauled and suction pipes to tanks to be renewed.

All valves and cocks to be overhauled and ground in, including safety valve.

Feed pump, general service pump and donkey to be opened up, overhauled, new valves fitted as necessary, adjusted and put in good working order.

Windlass counter shaft to be removed, put in lathe, trued up and returned with new pinions and bearings for same. The wood foundation carrying this

counter shaft to be split out and replaced by new.
The windlass itself to be overhauled and adjusted.

MAIN DECK:

The wood and iron battens for all three hatches to be replaced by new.

The hatch covers for all three hatches to be overhauled, repaired and missing and broken ones replaced by new.

The port main rail, pin rail and chafing plank to be renewed for a length of about 140 ft. to original scarphs. New copper facing to be fitted on both port and stbd. pin rails.

The after port mooring chock to have outside ring replaced by new.

6 deck planks in way of mainmast to be renewed to approved butts.

3 planks in way of mizzenmast to be renewed as above.

3 planks at spanker mast to be renewed from hatch coaming to beam on inside of poop. [86]

The deck planks where chafed in various places to be smoothed off.

The port pump to be removed and replaced by new, together with pipe if necessary. New upper box to be fitted to stbd. pump and the casing over pumps repaired and top renewed.

The wood seatings at the fore, main and mizzen sheet ring bolts to be renewed and each of the sheet ring bolts to be removed, faired and returned, and new rings fitted to same. One other leading ring bolt at the foremast to be replaced by new.

9 deck lashing ring bolts on each side to be re-

moved, straightened up and or renewed and returned.

Halyard ring bolts on rails for each mast to be faired up and renewed as necessary.

Port ladder to forecandle-head to be renewed.

1 new gangway 36' long to be made and supplied.

6 hardwood brass mounted deck buckets, together with rack for same to be made and installed in an approved location.

Two 400-gallon water-tanks (iron) of usual pattern to be supplied and installed with foundation blocks, ring bolts and lashings or up and down bolts as may be approved.

Hand force pump to be overhauled and put in good working order.

CALKING DECKS, ETC.:

The foot of all bulwark stanchions to be calked and decks to be calked around hatches, together with one seam on each side of same for full length of vessel. Four seams along waterways on each side to be calked full length of vessel, carrying same right under forecandle-head. Alleyways under forecandle-head to be calked on each side. Forecandle-head deck to be searched for leaks, calked where necessary and made tight, including quick work and superstructure on each side, 500 ft. of calking on poop to be done as directed. All seams to be paved with pitch or put-tied as before. [87]

POOP:

Overhang of poop to be renewed right across together with rail and stanchions on port side and in center.

Athwartship covering board to be renewed right

across break of poop including lodge knee at each end.

Two poop ladders from poop to top of house to be renewed and one from main deck to poop.

Three strakes of quick work and covering board on port side of poop to be renewed back to original scarphs. The whole to be calked and made tight.

Buffalo rail on port side to renew from break of poop to original scarph together with stanchions and guard-rail in way of same, also hardwood gangway stanchion at forward end.

Two planks in poop deck on port side to be renewed back to butts and covering board and moulding across forward end of top of house to be renewed.

Companionways, skylights, binnacle and wheel boxes to be overhauled and refitted, doors rehung, mouldings renewed where chafed, broken glass replaced by new, locks to be overhauled, woodwork painted and fittings put in good working order.

One 22 ft. life-boat with chocks, gripes, mast, rudder, sail, oars, water-breakers, boat cover and full equipment complete to be supplied and installed in place on poop deck.

One 17 ft. working boat with all gear complete including cover, davit, blocks and falls to be supplied and installed in davits with lashings complete.

One copper smokestack with Liverpool hood to be supplied and set in place for cabin stove. [88]

UNDER POOP:

Chief mate's and mate's and spare room to be entirely gutted out, including ceiling on ship's side

and rebuilt as before with new doors, bunks, drawers, lockers, decks and other fittings as before.

Storeroom bulkhead under poop to be repaired and doors to same to be renewed.

Toilet-room, all fittings to be removed, ceiling to be renewed and room to be refitted with old fittings provided same are in suitable condition, if not, fittings to be new. Lead pipe to toilet to be thoroughly examined and if damaged, same to be replaced by new.

The two after storerooms to be thoroughly cleaned out, fittings to be overhauled and returned, and flour locker to be relined with galv. iron as before.

After cabin to be cleaned out and refitted with cabin table, 2 rocker chairs, 1 Morris chair and 2 plain chairs. Carpet of approved pattern and of same quality as old to be laid.

Captain's room and office to be cleaned out, doors, lockers and fittings to be overhauled and refitted. Safe in captain's office to be overhauled, cleaned, painted and new combination fitted. Both of these rooms to be fitted with new carpet of approved pattern.

All doors throughout cabins to be overhauled, rehung and refitted.

Forward cabin, to be thoroughly cleaned out, settees to be repaired and fitted with new upholstered cushions as before, cabin to be fitted with dining-room table and 6 dining chairs.

The fore cabin, passageways, steps, two mates' rooms, one state-room and bath-room to be covered

with inlaid linoleum of approved pattern, quality as before. [89]

Pantry, fittings such as lockers, racks, shelves, dressers, bins, etc., to be overhauled and refitted.

PAINTING:

All accommodation under poop to be thoroughly cleaned, painted and varnished as before, and all new woodwork to be given three coats of good oil paint.

Decks, deck erections and fittings fore and aft to be given and coat of good oil paint as before, including all around bulwarks, poop and forecastle-head. (Tar to be used on main deck at owner's option.)

UPPER DECK:

Lazarette and sail locker to be cleaned out, sail locker to be rebuilt with shelves and stanchions and new floor planks to be laid over cargo chutes.

Water-tank under break of poop to be cleaned and cement washed and cover rejoined, wood covering around tank also to be renewed.

Covering around pump pipes to be repaired and made good as before.

Rope and oil rooms to be cleaned out and refitted as before.

HULL REPAIRS:

All chafed and bruised spots in planking around hull from water line to rails fore and aft on both sides to be dressed off smooth and graving pieces fitted where necessary.

Mouldings and chafing pieces in way of chain plates and fore and aft on both sides to be smoothed

off, repaired and renewed as may be found necessary to make same good as before, and seams in way of chain plates to be well calked before new plates are installed.

Ship to be placed on a suitable dry dock or marine railway, hull to be cleaned and painted with two coats Woolsey's copper paint on bottom and black to top of rail. [90]

Garboard strake on port side for full length where same is chafed to be trimmed off and graving pieces fitted as necessary.

The after length of shoe to keel to be removed and replaced by new with copper and felt between same and keel.

The cement in seams all over ship's bottom where started to be removed and replaced by new.

Garboard seams on both sides, hood ends of planking in all butts of bottom and topsides to be thoroughly calked, seams painted and cemented.

Before ship is again placed in water, entire planking of hull to be searched for leaks with hose on inside.

SAILS, TARPAULINS, ETC.:

The following sails to be supplied and bent:

- 1 foresail.
- 1 mainsail.
- 1 mizzensail.
- 1 spanker.
- 7 gaff topsails.
- 1 ring tail topsail.
- 1. fore staysail.
- 1 square sail to be repaired.

DESCRIPTION OF SAILS:

Foresail to be of No. O cotton canvas with one 20 ft. reef and heavy clew rings for reef, loose reef points 5/8" wire head and foot and full lining cloth. The entire length of after leach to have full cloth, the head foot and luff to have half cloth. After leach to have 6" manila bolt rope and covered the entire length, and double strengthening cloth at clews and reefs.

The mainsail and mizzen to be same as foresail except the reefs which are to be three reefs in each sail, one 6' lumber reef and two 12' reefs with loose reef points.

The spanker to have two 12' reefs, loose reef points and double reef cringles for each reef. [91]

Foresail, mainsail, mizzen and spanker to have double holes in luff and all holes, head, foot and luff to be covered with leather.

Ringtail and gaff topsails to be of No. 4 cotton canvas, roping to be covered from the head down after leach, foot and luff and up past the first reef and luff, all holes to be covered with leather.

Fore staysail to be of No. O canvas with one 10' reef and the after leach to be covered entire length.

Tarpaulins, 2 new tarpaulins for forward hatch 10'x10' 6", 2 for main hatch 15' 6"x27'x2", 2 for after hatch 14'x19' 6". One canvas cover for cabin skylight, and sail covers of usual pattern for fore, main and mizzen and spanker, foreboom staysail and three jibs. [92]

STEWARD'S DEPARTMENT.

CABIN EQUIPMENT:

1 Complete dinner set for harbor use for 12 persons.

1 Complete dinner set for sea use for 12 persons.

Extras:

3 12" meat platters.

3 9" Oval deeps.

1 Doz. Mush bowls.

1 Doz. Coffee mugs.

2 Gravy boats.

2 Milk pitchers.

2 Water jugs, one 1 qt. and one 2 qts.

1 Syrup pitcher glass.

1 Mustard jar.

2 Salt and paper shakers.

1 Carving set.

1 Doz. knives.

1 Doz. each forks, table and teaspoons heavy plated.

2 Butter knives heavy plated.

1/2 Doz. knives, forks, table and teaspoons, sea use.

1 Cabin tea and coffee pot.

1 Soup tureen.

1 Soup ladle.

1 Cabin stove and pipes.

3 White tablecloths.

3 Colored tablecloths.

2 Tea strainers.

1 Cabin dining-room lamp.

1 Pantry lamp.

- 1 1st mate room lamp.
- 1 2d mate room lamp.
- 1 State-room lamp.
- 1 Bath-room lamp.
- 1 Cabin hair broom.
- 2 3'x5' rugs.
- 6 18"x36" rugs.
- 1 4 gal. water filter.
- 1 Doz. water tumblers.
- 1 Cabin coal-scuttle.
- 1 Zinc for washing dishes, made to order.
- 2 Springs and mattresses for state-rooms.
- 1 Mirror after-cabin.
- 1 Mirror bath-room.
- 1 Bath-tub.

GALLEY EQUIPMENT:

- 1 5 gal. salt meat boiler.
- 1 3 gal agate ware boiler.
- 2 1 gal. agate ware saucepans.
- 2 3 qt. agate ware saucepans.
- 2 2 qt. agate ware saucepans.
- 2 1 qt. agate ware saucepans.
- 2 1 pt. agate ware saucepans.
- 1 1 gal. agate ware coffee-pot.
- 1 1 gal. agate ware tea-pot.
- 4 10" agate ware baking dishes.
- 6 10" meat pie deeps or mess pans.
- ½ Doz. pie plates.
- ½ Doz. cake plates. [93]

GALLEY EQUIPMENT.—Con'd:

- 2 Doz. Cup cake pans.
- 1 Doz. agate ware soup plates.

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- 1 Doz. agate ware mugs, pints.
- 1 Doz. knives, forks, tablespoons, teaspoons for sailors.
- 1 16"x16" roasting pan.
- 2 18"x14" bread baking pans.
- 2 18" frying pans.
- 3 Individual frying-pans.
- 3 22" dish-pans, heavy tin.
- 1 Zinc for washing dishes made to order.
- 1 Coffee-mill.
- 1 Butcher's cleaver.
- 1 Butcher's saw, 1 butcher-knife, 1 steel.
- 2 Potato peeling knives.
- 2 Basting spoons, 1 fork, heavy iron.
- 2 Soup ladles.
- 1 Water dipper.
- 1 Sausage machine.
- 2 Vegetable collander 12" and 8".
- 2 Gravy strainers 6".
- 1 Hot cake pan 10"x20".
- 2 Cake turners.
- 1 Skimmer.
- 2 Egg beaters.
- 2 Toasters.
- 1 Coal shovel.
- 1/2 Doz. Pot scrapers.
- 1 Chopping tray.
- 1 Rolling pin.
- 1 Chopping knife.
- 2 Galv. iron buckets.

NAVIGATION INSTRUMENTS, ETC.

- 2 Chronometers to be repaired or renewed, old

ones are in Astoria at V. Roost.

- 2 Barometers.
- 1 Thermometer.
- 1 Set charts, coast and sailing of the Pacific.
- 1 Pr. dividers.
- 1 Pr. parallel rulers.
- 1 Pr. marine glasses.
- 1 Bliss taffrail log and line.
- 1 Deep sea lead line.
- 1 Binnacle lamp.
- 1 Binnacle clock.
- 1 Set international code of signals.
- 1 House flag.
- 1 American flag.
- 1 Set side lights.
- 1 Reading light. 2 extra lamps for same.
- 1 Set blue lights.
- 1 Fog Horn.
- 1 Flare up light.

DONKEY-ROOM TOOLS.

- 1 12" monkey-wrench.
- 1 10" monkey-wrench.
- 1 8" monkey-wrench.
- 1 18" pipe wrench. [94]

DONKEY-ROOM TOOLS—Con'd.

- 1 10" pipe wrench.
- 1 8" pipe wrench.
- 2 Oil squirt cans.
- 2 Coal oil cans.
- 2 Hand lanterns.
- 1 Box lantern.
- 1 Machine hammer.

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- 1 Pr. blacksmith tongs.
- 1 Tube cleaner.
- 1 Solder iron.
- 1 Steam gauge.

CARPENTER TOOLS:

- 1 Set brace and bitt.
- 1 Hand drill and bitt.
- 1 Hatchet.
- 1 Crosscut and 1 rip saw.
- 1 Jack.
- 1 Smoothing plane.
- 1 Spoke shave.
- 1 Claw hammer.
- 1 Set blades for hacksaw.
- 1 1½" ship auger.
- 1 Oil stone.
- 1 Grindstone 118".
- 1 Horsing mallet.
- 1 Pr. pinchers.

DECK EQUIPMENT:

- 1 Jacobs ladder.
- 200' 2" delivery hose.
- 1 2" nozzle.
- 150' 1½" delivery hose.
- 1 1½" nozzle.
- 3 Fire axes.
- 1 Top maul.
- 1 Donkey fall 5/8" plow steel 280 ft.
- 1 Chain lumber sling 12 ft. 5/8" black iron.
- 1 Coil 9" manila hawser.
- 2 Coil 6" manila hawser.
- 2 Coil 4½" manila line.

- 2 Cork fenders.
- 3 Fore and aft wooden fenders 12 ft. long.
- 6 Up and down skid 3"x14x8' long.
- 1 Cargo sliding spar 8x8x40.
- 2 Cargo skids 10'x10' 2" planks.
- 20 Deck lashings 34 ft. long 3/4" galv. iron chain.
- 6 Hog lashings (part wire and part chain, wire part 28 ft. long, 3 1/2" rigging wire, thimble and shackle in one end chain 3/4" iron in the other chain part 13' long).
- 6 Mast band for hog lashings (made in two parts) with one heavy ring for 3 bands and 2 rings or links for the other three on each side of mast.
- 19 Turnbuckles galv. 1 1/4" for deck lashings, 1 1/2" for hog lashings. [95]

CONDITIONS.

With this specification a blue-print of the sail plan and rigging plan is supplied, said blue-print to be taken as a guide only, the measurements not being guaranteed. The contractor will be held responsible for the size and fit of all spars, sails, running and standing rigging, etc.

The vessel is now lying at the dry dock at St. Johns, Ore., where she can be seen by invited bidders.

All of the work called for to be carried out in a first class and workmanlike manner to the satisfaction of the master and owner's representative.

No extras of any nature whatsoever will be allowed unless previously agreed upon in writing between the parties interested.

All old material removed to become the property of the contractor, and all dirt and rubbish accumulated during the course of repairs to be removed by the contractor.

Contractor to be prepared to furnish satisfactory surety company bonds for the faithful performance of the work, amount of bond to be not less than 50% of the amount of contract price.

All full description of all rigging, sails, tarpaulins and other supplies to be obtained from the master on board the ship.

Tenders distinctly stating price and time required for the full and proper performance of the work to be delivered to Mr. G. F. Thorndyke at the Oregon Hotel, Portland, Oregon, by noon of Wednesday, January 10, 1912.

The right is hereby reserved to reject any or all tenders, and any tender not complying fully with the above specification and conditions, will not be given consideration.

S. F. THORNDYKE,

Manager Globe Navigation Company, Ltd.

Seattle, Wash., Jan. 1, 1912. [96]

DESCRIPTION OF RUNNING RIGGING,
BLOCKS, ETC.

The following description to be taken as a guide only, quantities not guaranteed correct, contractor to satisfy himself on same.

6 Boom tackle pennants 12' long, 3½" rigging wire,
hock in one end and thimble in other.

2 Boom tackle pennants 40' long, 3½" rigging wire,
hock in one end and thimble in other.

- 3 Boom tackle pennants 4' long, $3\frac{1}{2}$ " rigging wire,
hock in one end and thimble in other.
- 4 12" double blocks common } boom tackle blocks.
- 4 12" single blocks common }
- 2 10" snatch blocks 2—8" snatch blocks.
- 4 16" lead blocks for throat and peak halyards patent.
- 18 16" patent blocks for peaks single.
- 2 16" patent blocks for throat triple.
- 3 16" patent blocks for throat double.
- 3 14" upper sheet blocks double.
- 6 9" double patent blocks for rope straps. (Purchase blocks).
- 3 reef shackles.
- 2 iron rods 1" galv., 13' long, hook one end, lip in other.
- 1 Sheet chain 1", iron 15' long, shackle $\frac{5}{8}$ " link in other.
- 4 throat and peak purchase pennants 13' long, $2\frac{1}{4}$ " rigging wire galv. clip hooks in one end, 9" patent block.
- 1 pennant same as other except 12' long.
- 2 fore brace pennants 13' 6" long, $2\frac{1}{4}$ " wire galv. rigging, clip hooks one end, 10" patent block in other.
- 3 doz. galv. $1\frac{1}{8}$ " iron belaying pins.
- 3 peak halyards, 1 coil 4" manila rope each 3 coils.
- 3 throat halyards 80 fths. each=240 fths. $3\frac{3}{4}$ " manila rope.
- 1 spanker halyard 90 fths. $3\frac{3}{4}$ " manila rope.
- 1 fore staysail halyard 50 fths. $3\frac{1}{2}$ " manila rope.

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- 3 jib halyards 140 fths. 3" manila rope.
- 4 jib down hards 1 coil $2\frac{1}{2}$ " manila rope.
- 320 fths. $2\frac{3}{4}$ " manila rope throat and peak purchase.
- 1 coil $2\frac{3}{4}$ " manila boom lifts.
- 4 coil $2\frac{3}{4}$ " manila topsail halyards down hard and tripan lines.
- 68 fths. $3\frac{1}{4}$ " topsail tack.
- 45 fths. $4\frac{3}{4}$ " fore, main and mizzen sheets.
- 30 fths. 4" spanker sheet.
- 1 coil $3\frac{1}{2}$ " boom tackle.
- 3 9" mealine bushed gaff topsail halyard blocks.
- 3 9" patent bushed gaff topsail halyard blocks.
- 2 9" patent bushed double iron strapped reef tackle blocks.
- 2 9" patent bushed single iron strapped reef tackle blocks.
- 1 7" patent bushed double iron strapped handy billie blocks.
- 1 7" patent bushed single iron strapped handy billie blocks.
- 9 8" patent bushed single for rope strap for gaff topsail down haul blocks.
- 2 10" metaline bushed single iron strap, single hook gaff topsail sheet quarter blocks.
- 3 10" common bushed double, single hook boom lift block.
- 3 gaff topsail sheet chain 12' long $\frac{1}{2}$ " link.
- 6 leather funnels for throat and peak halyards in wake of gaff.
- 2 square sail yard brace pennants 75' long $2\frac{1}{2}$ " wire galv. rigging wire.

- 4 wire straps 5 feet in circumference $3\frac{1}{2}$ " wire
served and covered with leather & heavy
thimble & ring in same.
- 50 fths. 3" manila rope squaresail braces.
- 54 fths. 3" reef tackles.
- 20 fths. $2\frac{1}{4}$ " handy billie.
- 60 fths. 4" peak and spanker down haul.
- 80 fths. $3\frac{1}{4}$ " topsail sheets manila rope.
- 45 fths. 3" ring tail topsail sheet manila rope.
- 220 fths. signal halyards manila rope.
- 36 fths. $2\frac{1}{2}$ " boat falls manila rope. [97]
- 30 ft. $\frac{5}{8}$ " flexible galv. steel wire pennants fore gaff
topsail.
- 54 ft. $2\frac{1}{2}$ " galv. wire topsail runners, 3 topsails 110'
each, clip hooks in one end, 9" blocks in other
end patent.
- Fore main and mizzen boom lifts 65' each (3" galv.
rigging wire, egg block in one end, shackle and
thimble in other)
- 3 $2\frac{1}{2}$ galv. rigging wire pennants, thimble one end,
8" eye other. Pin rails in rigging for lumber
reefs.

NOTE: All wire pennants except the 75 feet
squaresail yard brace pennants to be served all
over. The gaff topsail halyard runners to be served
25 feet from clip hooks. [98]

LIST OF STORES REQUIRED TO REPLACE
THOSE LOST OR DAMAGED "WM. NOT-
TINGHAM" DISASTER,

OCTOBER, 1911.

SLOP CHEST A/C.

5 Pr. blankets.	13 Pr. Overalls.
11 Pr. Mitts.	3 Pr. Arctic Sox.
7 Pr. Woolen sox.	18 Spools thread.
16 Handkerchiefs.	5 Packages needles.
5½ Suits Underwear, Med.	65 cakes soap.
2 Doz. cotton shirts.	6 gross matches.
2 Jumpers.	155 lbs. tobacco.
4 Towels.	9 Pr. rubber boots.
3 Sweaters.	8 oil suits.
15 Pr. shoes.	12 suits dungerees.
7 Pr. slippers.	12 suits underwear, woolen.
7 Pr. Tennis shoes.	2 doz. hats.
1 Oil skin coat.	1 doz. towels.
8 Souwesters.	2 doz. caps.
1 Doz. knives.	2 suits underwear, extra.
1 Pr. sea boots.	

CHANDLERY STORES:

3 cases illuminating oil.	1 stove pipe.
20 gals. Stockholm tar.	5 engine oil (Gals.).
10 gals. cylinder oil.	20 lbs. emery cloth.
50 lbs. oxide iron.	2 lbs. cotton waste.
15 lbs. mast coat lead.	2 doz. sand paper.
1 bale oakum.	75 lbs. G. S. Zinc.
1 heavy galv. iron 5" ell.	5 Gals boiled oil.
1 heavy galv. iron 7" ell.	5 cases raw oil.
18 lbs. asbestos.	5 gals. turpentine.
18 lbs. zine.	2 doz. tins lye.

1 doz. bath bricks.	30 fms 31¼ manila rope bolt.
4 only deck brooms.	12-30 mast hoops 360.
2 galv. buckets.	6-17 mast hoops 102, 462.
1 coil #1 sq. flax packing.	1 Pk. 15½ R. E. Sail
8 ¾x6 mch. bolts.	needles.
1 coil 6" manilla, 793 lbs	2 Doz. asst. rope needles.
1 coil 4" manilla, 355 lbs	175 ft. N. C. lead 36#.
1 coil 3¾" manilla, 310 lbs	1 sad handle.
1 coil 2¾" manilla, 168 lbs.	30 lbs. cotton twine.
53 lbs. N. B. Linemar.	2 gals. spar varnish.
64 lbs. Hemp spunyarn.	Picture wire.
78 lbs. Manila spunyarn.	Brass screw eyes.
2 lbs. Chrome green.	5 gals. new jersey copper
1 Pc. rainbow sheet pack-	paint.
ing.	2 7/16 galv. ring screw bolts.
6 9½x15½x7/8 lig sheaves.	6 #3 galt lamp wicks.
96 ft. 6" manila rope bolt.	

SUBSISTENCE STORES:

90 lbs. crew coffee.	24# corn starch.
10 lbs. crew tea.	2# A. & A. Soda. [99]
1 lb. red pepper.	1 tin asst. cakes.
100# rice.	356# D. G. Sugar.
25# sago.	550# G. C. Sugar.
25# tapioca.	356# butter.
4 tins crackers.	143# packing salt eggs.
9 lbs. cabin tea.	2 cases lard.
21 lbs. chocolate.	43# Y. A. Cheese.
150 lbs. evaporated potatoes.	3 cases cond. milk.
43 sacks flour.	40# roasted coffee.
10 10# sacks corn meal.	2 Box apples green.
130# rolled oats.	100# dry apples.

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50# evap. pears.	4 sacks S. W. Bears.
100# prunes.	125 lbs. sp. peas.
25# currants.	2 25# Bx. vermicelli.
25# citron.	2 25# Bx. macaroni.
5# cocoanut.	3 cs. stg. beans.
25# raisins.	5 cs. end. tomatoes.
3 cases asst. pie fruit.	3 cs. green peas.
1 case ex. table pears.	1½ tons potatoes.
1 case ex. table peaches.	200# cabbage.
1 case ex. table apricots.	1 sack turnips.
30 tins asst, jelly 2# tins.	1 sack beets.
1 case ex. table apples.	1 sack carrots.
3 gal. vinegar.	200# silverskin onions.
4 bot. V. C. Catsup.	2 cs. corn beef.
2 ea. sour pickles qts.	2 cs. boil beef.
4 bot. L. & P. Wor. Sauce.	1 cs. rst. mutton.
2 lge. curry powder.	2 cs. V. C. Soups.
7 1# tins mustard.	2 cs. club house sausages.
7 1# tins bl. pepper.	104# bacon.
1 # can allspice.	105# ham.
1 # can cloves.	2 25# kits salmon bellies.
1 # can cinnamon.	4 kits mackerel.
1 # can nutmeg.	2 hf. bbls. salmon.
2 1# tins ginger.	150# codfish in tins.
2 1# hops.	3 cases 64 doz. oysters.
10 cartons table salt.	2 cases 4 doz. mince clams.
50 # cooking salt.	2 cases 8 doz. salmon.
88 # lima beans.	3 jkts. syrup.
1 Bbl, mineral water.	1 5 gal. maple syrup.
50 Lbs. corn meal.	2 gals. molasses.
10 Lbs. sago.	¼ # bay leaves.
10 Lbs. tapioca.	3 Doz. lunch tongues.
50# pilot bread in tins.	2 cs. vienna sausage.

100# L. Bar Soap.	1 doz. lge. chimneys.
12 bars sapolio.	1 doz. #2 burners.
6 Bxs. toilet soap.	4 Pa. toilet paper.
9 Pa. gold dust.	½cs. toilet paper rolls.
50 # sal soda.	5 gross matches.
1 Doz. pts. brilliantshine.	1 Bx. candles.
5 tins stove polish.	8 cs. coal oil.
2 Whisk brooms.	
2 Scrub Brushes.	

SUNDRY ITEMS TO BE FURNISHED:

- 1 revolver.
- 1 union jack.
- 1 burges. [100]

COPY.

Jany. 12, 1912.

Mr. Thorndyke,
Globe Navigation Co.,
Portland, Oregon.

Dear Sir:

We beg to advise that should you award the contract to the Albina Engine & Machine Works, for the repair of the Schooner "William Nottingham," we

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will execute a bond guaranteeing the faithful performance of his contract.

Yours very truly,
McCARGO, BATES & LINCH,
General Agents.

KVL/L.

Cornfoot Exhibit 2. A. W. P.

[Indorsed]: Depositions of William Cornfoot and Robert McIntosh, Witnesses on Behalf of Respondent Taken Before Alva W. Person, Notary Public for Oregon. Filed in the U. S. District Court, Western Dist. of Washington. Aug. 18, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy.
[101]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2156.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY, a
Corporation,

Defendant.

Amended Complaint.

To the Honorable JEREMIAH NETERER, Judge
of the Above-entitled Court.

Now comes the plaintiff by leave of court had this
24th day of February, 1914, and files this amended

bill of complaint, wherein and for cause of action against the said defendant, civil and maritime, alleges as follows:

FOR A FIRST CAUSE OF ACTION:

That the plaintiff, at all the times hereinafter mentioned, was and still is a corporation, organized and doing business under and by virtue of the laws of the State of New Jersey, and is the owner of the schooner "Wm. Nottingham" hereinafter referred to. That it is duly authorized to do business in the State of Washington, and has paid its annual license fee as such corporation last due to the State of Washington.

II.

That the Fireman's Fund Insurance Company is a corporation organized and doing business under the laws of the State of California, and duly authorized to do business in the State of Washington, and maintaining an office in said state for the transaction of its business. [102]

III.

That on the 17th day of April, 1911, the defendant made to plaintiff a policy of insurance, a copy of which is hereto annexed, for the sum of six thousand dollars, on the schooner "Wm. Nottingham" against the perils of the sea and other perils therein mentioned, during the time in said policy set forth, which is hereto annexed marked Exhibit "C."

IV.

That on or about the 2nd day of October, 1911, said schooner sailed from Westport, on the Columbia River, for Callao, Peru, carrying a cargo of lumber,

and while engaged on said voyage, and on October 8, 1911, said schooner encountered a terrific wind, which tore away one of the two life-boats, flooded the donkey-room and put out the fire under the donkey-boiler. Said gale continuing, early on the morning of the 9th of October the deck lashings parted and released the deck-load, a part of which went overboard, and carried with it the first or mainmast, then the mizzenmast and last the spanker mast. The connections between the donkey-boiler and the water-tank were broken and all fresh water was lost, and the schooner became completely filled with water. Through the efforts of the master and crew the vessel was nearly cleared of water, when another heavy gale came up, accompanied by high seas, which caused her to again fill rapidly. These conditions continued until the 13th, when the schooner, being water-logged and being practically unmanageable, there was great danger of her breaking up and being driven ashore, so that the officers and crew, for the safety of their lives, were compelled to leave and abandon her and seek safety in finding their way to the shore, and the said schooner being thereupon abandoned by her officers and crew, became a derelict, having lost, in addition to the three masts, all gaffs, beams, blocks, sails and running and [103] standing, rigging, and all iron work, and being otherwise damaged.

V.

That at about twelve o'clock noon on October 15, 1911, the steam tug "Wallula," owned and operated by the Port of Portland, Oregon, found said

schooner "Nottingham," a derelict and abandoned by her officers and crew, off the mouth of the Columbia River, and took her in tow and brought her to the port of Astoria, Oregon.

VI.

That on October 14, 1911, the Globe Navigation Company gave to the Firemen's Fund Insurance Company, at Seattle, Washington, notice that the schooner "Wm. Nottingham" had been dismasted in a severe storm, had become water-logged and abandoned by her officers and crew, and was a derelict on the Pacific Ocean, somewhere off the mouth of the Columbia River, and that said Globe Navigation Company surrendered and abandoned said schooner in her derelict condition to said Fireman's Fund Insurance Company to do with as they thought best.

VII $\frac{1}{2}$.

That on October 16, 1911, the Globe Navigation Company to confirm its verbal abandonment, made on October 14, 1911, gave to the Fireman's Fund Insurance Company a written notice of its abandonment of said vessel to said Insurance Company, said notice being in writing, a copy of which is hereto attached, marked Exhibit "B" and made a part of this complaint.

VII.

That from and after the 15th day of October, 1911, the officers and crew of said tug "Wallula" remained in possession of said schooner "Wm. Nottingham," and at all times refusing to deliver possession of said schooner, until about the 6th day of November, 1911,

in and on account of the salvage claim made as aforesaid, the additional sum of two thousand four hundred fifty-two and 45/100 dollars (\$2,452.45).

XI.

That the Trust Company of America, trustee mortgagee in Policy No. 103,834 of said defendant, has for value received sold, transferred and assigned all its right, title and interest in and to said policy of insurance, and any money due or to become due thereunder to the plaintiff.

XII.

That said voyage was so utterly broken up and lost, and said schooner and her outfit, cargo and stores were totally [106] lost by the perils of the sea and perils insured against in said policy, and the defendant had due notice thereof, and became bound to pay the sum insured in said policy to the plaintiff, together with said salvage and additional charges, as provided in said policy.

XIII.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court, and that said defendant is within said jurisdiction.

FOR A SECOND CAUSE OF ACTION against said defendant:

I.

Plaintiff repeats the allegations contained in paragraphs one and two of its first cause of action herein, to the same intent and purpose as if set forth at length herein, and makes said paragraphs a part of its second cause of action.

III.

That on the 17th day of April, 1911, the defendant made to plaintiff a policy of insurance for the sum of twenty-four thousand dollars on the schooner "Wm. Nottingham" against the perils of the sea and other perils therein mentioned, during the time in said policy set forth, which said policy of insurance is identical in every respect with the policy referred to in paragraph three of plaintiff's first cause of action, a copy of which is annexed to this complaint, save and except that the sum insured is twenty-four thousand dollars instead of six thousand dollars, and in case of loss, to be paid to this plaintiff instead of the Trust Company of America, and that the premium therefor was the sum of twelve hundred dollars instead of the sum of three hundred dollars, and the plaintiff incorporates here all the other terms and conditions of said policy, the same as if [107] set forth at length herein.

IV.

Plaintiff repeats the allegation contained in paragraphs four, five, six, six and one-half, seven, eight, nine, ten, twelve and thirteen of its first cause of action herein, to the same intent and purpose as if set forth at length herein, and makes said paragraph a part of this its second cause of action.

WHEREFORE, plaintiff prays judgment as against said defendant for the sum of thirty thousand dollars damages on account of the loss of said schooner "Wm. Nottingham," and for such other and further sums as said defendant may be liable to the plaintiff on account of the loss of said schooner,

and expenses incurred by said plaintiff incident to the matters and things set forth in its bill of complaint herein, and for such other and further relief in the premises as in law and justice it may be entitled to receive, and for its costs in this behalf expended.

CLISE & POE,
Attorneys for Plaintiff.

Post Office address:

405 New York Building,
Seattle, Washington. [108]

United States of America,
State of Washington,
County of King,—ss.

George F. Thorndyke, being first duly sworn, on oath says: that he is the manager of The Globe Navigation Company within the State of Washington; that he has read the foregoing bill, knows the contents thereof and that the matters and things therein stated are true as he verily believes, and that the matters and things therein stated are peculiarly within his knowledge, he having the control and management of plaintiff's affairs within said State.

GEORGE F. THORNDYKE.

Subscribed and sworn to before me this 6 day of February, 1914.

H. R. CLISE,
Notary Public in and for the State of Washington,
Residing at Seattle. [109]

Exhibit "B" [to Amended Complaint].

"Seattle, Wash., Oct. 16, 1911.

Fireman's Fund Insurance Company,
Coleman Building,
Seattle, Wash.

Dear Sirs:

You are hereby notified that we have just received telegram from the Master of the schooner "Wm. Nottingham" of which the following is a copy.

"Confirm Nelson's telegram 'Nottingham' filled October eight lost deckload and masts went by the board October ninth. Abandoned vessel October thirteenth latitude north 46.16, longitude west 125.25 fore and aft part of vessel gutted lost all fresh water. Do you authorize me to pay crew"?

In consequence of the damages sustained we hereby abandon to you the Schr. 'Wm. Nottingham' and claim for a total loss under the policies issued by you and outstanding upon her.

It will give us great pleasure to give you any information that you may require, or any assistance we can render in order to protect you. At present we are not informed as to the particulars.

Yours truly,

THE GLOBE NAVIGATIONCOMPANY,

Per G. F. THORNDYKE.

GFT/G. [110]

Exhibit "C" [to Amended Complaint].

No. 103,834.

Hull Time.

\$6000.—

**FIREMAN'S FUND
INSURANCE COMPANY**

SAN FRANCISCO, CALIFORNIA.

IN CONSIDERATION OF Three hundred
..... Dollars
to it agreed to be paid by the insured hereinafter
named By these presents Insures Six thousand
Dollars on account of

THE GLOBE NAVIGATION COMPANY

In case of Loss to be paid to The Trust Company of
America, Trust Mortgagee.

From the 20th day of April, 1911, at noon until
the 20th day of April, 1912, at noon Pacific Standard
time upon his or their interest as owners in the body
machinery, tackle, apparel, and other furniture of
the good schooner "Wm. Nottingham,"

Vessel Valued at Forty-five Thousand Dollars.

The insured in accepting this policy, hereby binds
himself or themselves according to the following
agreements and stipulations:

1st. In case of loss, same to be paid in sixty days
after proof and adjustment of loss and proof of in-
terest in the said vessel, (the amount of the notes
given for premium, if unpaid, being first deducted,
and all sums due or coming due to the Company from
the insured being first paid or secured to the satis-
faction of the Insurers), but no partial loss or par-
ticular average shall in any event be paid under this
Policy. This Company not to be liable for any sums

the insured may pay to another vessel, her cargo or freight, for or on account of collision.

If on a passage at expiration of the term, with liberty to the insured to renew the Policy for three months at the same rate of premium, if application be made to the Company on or before expiration of the first term. The risk, however, is to terminate at any port, or place at which the vessel may first arrive during the said extended time, on her being moored therein in good safety. A *pro rata* premium to be returned for each entire month not entered upon of the extended time, no claim being made.

2d. Each passage subject to separate average. A new passage shall be deemed to begin as soon as the vessel shall have discharged her Cargo at a Port or place of destination, or such part of her cargo as may be destined to such Port or place; or [111]

3rd. Touching the adventures and perils which this Insurance Company is contented to bear, and takes upon itself in this Policy, they are of the Seas, Fires, Pirates, Assailing Thieves, Jettisons, Barratry of the Mariners (but not of the Master), embezzlement and illicit trade, or any trade in articles contraband of war excepted in all cases, and all other losses and misfortunes that shall come to the hurt or damage of the vessel hereby insured, or any part thereof, to which insurers are liable by the Rules and Customs of Insurance in San Francisco, including the Rules for Adjustment of losses printed on back hereof and the provisions of the Civil Code of California, excepting such losses and misfortunes as are excluded by this policy.

4th. Not to use any ports or places on the west coast of the United States of America south of San Francisco except Santa Cruz, Monterey, San Simeon, Port Harford, Gaviota, Goleta, Santa Barbara, San Buena Ventura, Hueneme, Port Los Angeles (Santa Monica), Redondo, San Pedro, Newport and San Diego. Nor any ports and places on the west coast of America north of San Francisco nor islands adjacent thereto, except Umpqua and Columbia Rivers, Humboldt, Coos and Shoalwater Bays, Gray's Harbor, Sitka, Unalaska and St. Paul's Harbor and Ports inside the mouth of the Straits of Fuca. Not to use any inside passage on the west coast of America north of Comox, Vancouver Island, nor ports or places on the east coast of Asia north of Shanghai, nor Island adjacent thereto, except ports in Japan. Not to use ports and places on the coast of Mexico between July 1st and November 1st. Not to use Torres Straits nor any Guano Islands, nor to engage in any inter-island trade, nor to use any ports or places in the South Pacific Ocean situated between the Equator and latitude 30 degrees south, and between Longitude 120 degrees west and 155 degrees east between December 1st and March 31st, except Taiohai, Marquesas Island and Papeete Society Islands, nor to go on a whaling, fishing, sealing or trading voyage. It shall and may be lawful however for said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places if thereunto obliged by stress of weather or other unavoidable accident without prejudice to this insurance.

5th. Not to load more than net registered tonnage with Guano, Salt, Iron, Stone, Ore or Lime. Not to carry bituminous coal in bulk, except between ports in the Pacific Ocean. Not to carry Grain in bulk, nor to proceed to sea Grain laden, except coastwise, without a certificate from an Inspector appointed by Underwriters upon the hull of cargo stating that the vessel is properly laden and fitted for her intended voyage.

6th. This company is not to be held liable in general average or otherwise for jettison of deck cargo unless the vessel is stranded, nor for wages and provisions, except when the same are a general average charged by the custom of the port of destination; nor in case of insurance upon a steamer for any injury to the machinery or boilers, nor for loss or damage to the vessel itself caused by explosion of boilers, unless occasioned by stranding, striking the ground, sinking, burning or collision with another vessel; nor for fuel, wages or provisions, or expenses of delay consequent upon repairs of any kind on any steamer, except in general average for wages and provisions of that portion of the crew absolutely necessary for the navigation of the vessel; nor for any claim for loss or expense arising from capture, seizure, detention, destruction, or the consequences of any attempt thereat by any hostile nation, or by any government, or by any officer, civil or military, claiming to act in its name or under its authority; nor by any insurgent or [112] revolutionary power (piracy excepted), anything herein to the contrary notwithstanding; also warranted not to aban-

don in case of blockade, and free from any expense in consequence thereof, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage.

7th. In case of any loss or misfortune resulting from any peril insured against, the party insured hereby engages for himself or themselves, his or their factors, servants and assigns, to sue, labor and travel, and use all reasonable and proper means for the security, preservation, relief and recovery of the property insured or any part thereof, and also to use all proper and legal means to recover, through general average, or otherwise, from the parties interested in Freight or Cargo, either or both, any and all sums due to the vessel or its owners on account of sacrifices, losses or expenses, incurred for the general safety or the common good, to the charges whereof this company will contribute in proportion as the sum insured is to the whole sum at risk; nor shall the acts of the Insured or Insurers in recovering, saving and preserving the property, insured, in case of disaster, be considered a waiver or an acceptance of an abandonment.

Rate per
cent
5 8th. It is agreed that one-third shall be deducted from the cost of all repairs of injuries and losses on the vessel by the perils insured (except on Anchors, Copper and calking under the Copper), as a commutation for the average difference between new and old; the remains of all articles replaced being considered as salvage, and their proceeds deducted from the gross loss. And it is especially agreed that, instead of deducting one-

third for new on the expense of re-metaling, including docking and calking, there shall be deducted two and one-half per cent of the cost of re-metaling, docking and calking, after deducting the value of the old metal and nails, for each and every month the metal shall have been on the vessel at the time when it is taken off; and if it shall have been on forty months or more, the cost shall be wholly borne by the Insured. In case the vessel shall be on a single bottom, the same rule shall apply to docking and calking, but one-twelfth to be deducted from the cost of painting for every month the paint shall have been on the bottom, and when the same shall not have been repainted for twelve months, the whole cost to be borne by the insured.

9th. It is also agreed that the insured shall
Prem- not have the right to abandon the vessel unless
ium
\$300. the amount which this company would be
liable to pay under an adjustment, as of
partial loss for labor and materials, (exclusive of
salvage or general average expenses and the cost
of funds), shall exceed half the amount hereby insured; and when the vessel is in a port or place where she can lie in safety, she shall in no case be sold for or on account of the insurers, until the estimated cost of repairs shall have been communicated to them and their consent to the sale obtained; and in case of the total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew for wages earned or services rendered previously to the loss shall be considered as so much of the salvage applied to the use of the shipowners, even

though the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss.

10th. It is also agreed that no assignment of this Policy shall be valid unless the written consent of the Insurers be first obtained and endorsed hereon. In all cases of return of premium, in whole or in part, ten per cent upon the return premium is to be retained by the Insurers. [113]

11th. And it is agreed that in the event of the insured failing or refusing to pay the premium, or any premium note when due, that it shall be at the option of the Company at any time thereafter upon written notice to the insured or his agent, to declare this Policy to be null and void; but the insured shall remain liable for such proportion of the premium or premium note as corresponds with the expired time at the date of such notice.

12th. It is furthermore Hereby Expressly Provided and Agreed that no suit or action against this Company for the recovery of any claim upon, under or by virtue of this Policy shall be sustained in any Court of Law or Chancery, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall have occurred; said period of twelve months to commence running from the time of such loss or damage, and not from the date when proofs of loss are made, or the amount of such loss or damage is ascertained, or any right of action under this Policy shall accrue; and in case any such suit or action shall be commenced against this Company after the expiration of

twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

13th. If there be an Agent of the Insurers located at or near any place where repairs are made, or proofs of loss or average taken, said Agent must be represented on the surveys, if any be held, and all bills for repairs, or proofs of loss or average, must be certified to by him, or they will not be allowed by this Company.

14th. In all cases of general average and/or salvage expenses, where the contributory value as stated in the adjustment, exceeds the value expressed in the policy, the liability of this Company shall be limited to the proportion which the amount insured bears to said contributory value.

(On margin)

It is agreed that, if the vessel hereby insured shall come into collision with any other vessel, and the insured shall in consequence thereof become liable to pay, and shall pay any sums not exceeding the value of the vessel hereby insured, in respect of injury to such other vessel itself, or to the goods and effects on board thereof, or for loss of freight then being earned upon such goods by such other vessel the insurers will pay the insured such proportion of three-fourths parts of said sums as the amount hereby insured bears to the value of the vessel hereby insured (but not exceeding in any event the amount of this policy). But this agreement is in no case to be construed as extending to any sums which the

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insured may become liable to pay or shall pay in respect of loss of life or personal injury to individuals, from any cause whatsoever.

Warranted not to carry coal or case oil from ports and/or places on the Atlantic Coast.

This insurance is against total and/or constructive total loss of vessel including general average and/or salvage charges and/or claims under three-fourths ($\frac{3}{4}$) running down clause.

IN WITNESS WHEREOF, the FIREMAN'S FUND INSURANCE COMPAY has caused these presents to be signed by its duly authorized officers, in the city of San Francisco, State of California, this 17th day of April, One Thousand Nine Hundred and Eleven.

WM. J. DUTTON,
President. [114]

RULES FOR ADJUSTMENT OF LOSSES

Under this Policy.

Rule I.

Metal and Metaling.

The following items shall be considered as chargeable to the Metaling.

1. The metal and nails.
2. The paper or felt; both at their cost, delivered alongside or on board the vessel.
3. The labor of stripping off the old metal, and of punching and putting on the new, which is to be charged at the price actually paid therefor, when a separate bill for such labor can be procured. And in default of such separate voucher, the labor on the metal is to be estimated at the rate of thirteen (13)

sheets of metal to the day's work, as charged for in the calker's bill of labor.

4. The cost of picking up the old metal and packing the same for sale.

Patching Metal.

5. Patching metal and calking under the same, when more than twenty (20) sheets are used, shall be adjusted in the same manner, so far as relates to the copper clause in the Policy, as when the whole bottom is stripped and re-metaled. When less than twenty sheets are used, the patching and calking under the same shall be placed in the vessel column, one-third off.

Rule II.

Docking and Calking.

The clause making the cost of docking and calking chargeable to Underwriters in the same ratio as re-metaling, shall be construed and defined to mean:

1. That when a vessel is docked or hove out solely for the purpose of remetaling (or, if on a single bottom, or recalking), all the expenses attending the docking or heaving out and calking, including materials used therefor, shall be charged to owners at the rate of two and one-half per cent per month for every month that the metal shall have been on the vessel at the time when it is taken off, or, if on a single bottom, for every month intervening since she was last calked.

2. When a vessel is docked, or hove out for the two-fold purpose of remetaling, (or, if on a single bottom, recalking) and repairing keel or bottom, by reason of having collided or stranded, then the ex-

pense of docking or heaving out shall be proportioned *pro rata* upon coppering and (or) calking and other repairs, in the proportion of the number of days' work expended upon each respectively. The above rules shall also apply to wharfage, but no wharfage shall be allowed for, except when indispensably necessary to the repairing of the vessel.

3. In default of a separate bill for calking, the labor of reefing out the old oakum, picking, spinning and putting in the new and pitching the seams, is to be estimated at three and one-half ($3\frac{1}{2}$) days' labor to the bale of oakum used, and the time occupied and material used in recalking under the metal, shall be estimated at one-half of the time and material required for recalking the whole vessel exclusive of decks.

4. The expenses attending the calking above the metal shall be adjusted less one-third for new.

5. The expense of navigating and towing the vessel, to and from, and entered dock, including pilotage and wages and provisions of hands specially employed to navigate the vessel to and from the place of repair, shall follow the docking or heaving out as herein defined. But the wages and provisions of the regular crew of the vessel shall never be allowed for in particular average. [115]

Rule III.

Commissions.

All commissions actually paid in a foreign or domestic port shall be chargeable as heretofore to the various interests adjusted upon. But no other commission shall be chargeable against insurers on

disbursements in partial or salvage losses, nor in General Average, when ship and cargo belong to the same owners, nor in any other case when no such commissions have been actually paid, and when no charge therefor would be customary, or collectible in the ordinary course of the business of the insured, had no disaster occurred.

Rule IV.

Adjuster's Fees.

The Adjuster's fees in Particular Average, whether on vessel, cargo, or freight, shall be chargeable in the adjustment to the various interests adjusted upon, and shall be in proportion to the several amounts as apportioned therein.

Rule V.

Adjuster's Attitude.

The traditional and necessary attitude of an adjuster is that of a Referee and not that of an Attorney or Advocate. It is his duty, in all cases, to act with strict impartiality between insurers and insured, regardless of favor toward friend or employer, and intent solely upon the legal and clerical accuracy of his calculations. This rule shall be understood to be binding in cases of Particular Average, and in adjustments upon estimates for repairs, made with a view to compromise, with the same force as in cases of General Average.

Rule VI.

Surveys.

The insurers shall not be obliged to accept any adjustment on a vessel based upon a survey which omits to discriminate between the repairs attributed

only to the perils insured against, and such repairs as are due only to wear and tear, or to the original defects, natural decay, or depreciation of the vessel.

Rule VII.

Bills for Repairs.

When bills for repairs are presented, which include items indifferently specified chargeable partly to owners and partly to underwriters, and having no reference to discriminations in the survey, the adjuster shall require the claimant or master to separate the charges in accordance with the survey. Failing wherein, the adjuster shall refer the bill back to the maker thereof, with a request to separate the items, so as to correspond with the survey. Failing in both, it shall be the custom to charge the whole of the unspecified items to the "owner's" column.

[116]

Rule VIII.

Special Charges on Cargo.

When sacrifices are made or expenses incurred for the benefit of all concerned in ship and cargo, and by reason of loss or condemnation of the ship, the cargo is the only interest saved to contribute, the proper proportion of such losses shall be paid by insurers on cargo, as General Average losses, though adjusted under the name of Special Charges on Cargo; and notwithstanding that the goods may be insured "free of particular average."

Rule IX.

Appointment of Surveyors and Appraisers.

In all cases of Average, whether General or Particular, whether on Hull or Cargo, the selection and

appointment of Surveyors and Appraisers shall be agreed upon beforehand by and between the insured or claimants in average or their representatives of the insurers on the other; and the services of the persons so appointed shall be understood to be wholly disinterested as between all parties concerned. No representative or underwriters shall be expected to certify, approve or accept any surveys or appraisements made in contravention of this rule; but such documents shall be deemed to be wholly *ex parte* in character, and, as such, open to criticism, or liable to be rejected altogether.

In no case shall any ship-carpenter, rigger, or other mechanic who may have served on a survey, be employed to make the repairs, or any portion thereof.

Rule X.

Payment of Losses.

All losses shall be payable sixty days after proof and adjustment of loss and proof of interest, and if payment be anticipated, interest shall always be discounted for the time so anticipated, at the current rate of interest at the time of payment. Provided, however, that General Average claims and losses of other descriptions, amounting to less than five hundred dollars (\$500), may be paid, without discount, so soon as ascertained; and nothing herein contained shall apply to sums paid in compromise.

Rule XI.

Wages and Provisions in General Average.

The schedule of allowance for wages and provisions in General Average shall be fixed as follows:

142 *Fireman's Fund Insurance Company vs.*

Wages: The actual wages paid, at the prices specified upon the articles.

Provisions:

For Masters.....\$1.50 per day

For Mates... 0.75 “ “

For Seamen and others..... 0.40 “ “

And the period for which wages and provisions shall be allowed, shall be from the day of bearing away for a port of distress, until the vessel is ready for sea. [117]

Rec'd copy of within Amended Complaint this 6th day of March, 1914.

BALLINGER, BATTLE, HULBERT &
SHORTS,

Attys. for Defendant.

[Indorsed]: Amended Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 10, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [118]

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Defendant.

Answer to Amended Complaint.

To the Honorable JEREMIAH NETERER, Judge
of the Above-entitled Court:

The answer of Fireman's Fund Insurance Company, a corporation, the above-named defendant, to the allegations of the amended complaint of The Globe Navigation Company, a corporation, the above-named plaintiff, admits, denies and alleges, as follows:

FIRST CAUSE OF ACTION.

I.

Defendant admits the allegations of paragraph I of the first cause of action. [119]

II.

Defendant admits the allegations of paragraph 2 of said first cause of action.

III.

Defendant admits the allegations of paragraph 3 of said first cause of action.

IV.

Answering unto the allegations of paragraph 4 of said first cause of action, defendant alleges that it has no actual knowledge in respect thereto, but admits that it has been informed that the incidents therein set forth actually occurred, and at the same time demands that strict proof be made thereof.

V.

Defendant admits the allegations of paragraph 5 of said first cause of action.

VI.

Answering unto the allegations of paragraph 6 of

said first cause of action, defendant denies that, on October 14, 1911, The Globe Navigation Company gave to Fireman's Fund Insurance Company, at Seattle, Washington, notice that the schooner "Wm. Nottingham" had been dismasted in a severe storm, had become water-logged and been abandoned by her officers and crew, or that she was a derelict on the Pacific Ocean somewhere off the mouth of the Columbia River, or any other place, or that said Globe Navigation Company surrendered and abandoned said schooner, in her derelict condition, to said Fireman's Fund Insurance Company, to do with as it thought best, and denies that said Globe Navigation Company [120] had any other communication of like tenor and effect with said Fireman's Fund Insurance Company on said day.

VI½.

Answering unto the allegations of paragraph 6½ of said first cause of action, defendant admits that, on October 16, 1911, The Globe Navigation Company gave to the Fireman's Fund Insurance Company a written notice of its abandonment of said schooner to said Insurance Company, and that said notice was in writing, and that a copy of said notice is attached to said amended complaint, marked exhibit "B." Defendant denies, however, that said written notice of abandonment was given on said date, or at all, to confirm any verbal notice of abandonment made on October 14, 1911, and specifically denies that any verbal notice of abandonment was given on October 14, 1911, or that any notice of abandonment was given to said Fireman's Fund Insurance Com-

pany, other than that of which said exhibit "B" is a copy.

VII.

Defendant admits the allegations of paragraph 7 of said first cause of action.

VIII.

Defendant admits the allegations of paragraph 8 of said first cause of action.

IX.

Answering unto the allegations of paragraph 9 of said first cause of action, defendant admits that it was mutually agreed between the parties in interest, including the parties to this action, that said schooner should be [121] relieved of the salvage claims of the said salvage libelants, together with the expenses necessarily incurred in said salvage proceedings, and admits that it has knowledge that the sum of three thousand (3,000) dollars was paid the port of Portland for salvage claims of libelants, and that while it has been informed that certain sums of money were paid by plaintiff on account of the other items set forth in said paragraph 9, defendant has no actual knowledge thereof, and for that reason denies the same, and demands that strict proof be made of each and every item therein contained. Defendant denies the remaining allegations of said paragraph.

X.

Defendant denies each and every of the allegations of paragraph 10 of said first cause of action.

XI.

Defendant has no knowledge or information as to

the truth of the allegations of paragraph 11 of said first cause of action, and for that reason denies the same, and demands strict proof thereof.

XII.

Defendant denies each and every of the allegations of paragraph 12 of said first cause of action.

XIII.

Defendant admits that all and singular the premises are within the admiralty and maritime jurisdiction of this Honorable Court, and that said defendant is within its jurisdiction, but denies that all and singular the premises are true. [122]

SECOND CAUSE OF ACTION.

I.

Defendant admits the allegations of paragraph I, of the second cause of action contained in said amended complaint.

II.

Defendant admits the allegations of paragraph 2, erroneously designated as paragraph 3, of said second cause of action.

III.

Answering unto the allegations of paragraph 3, erroneously designated as paragraph 4, of said second cause of action, defendant reiterates its answers to paragraphs 4, 5, 6, 6½, 7, 8, 9, 10, 12 and 13 of said first cause of action, and hereby makes its said answers to said paragraphs, the denials, allegations and demands of proof therein contained, answers unto paragraph 3 of said second cause of action and to the paragraphs of said first cause of action repeated in and made a part of said paragraph 3 of

said second cause of action, with the same force and effect as if set forth at length herein.

Further answering unto the allegations of said amended complaint, defendant alleges:

I.

That when plaintiff served upon defendant the so-called notice of abandonment, marked exhibit "B" and attached to said amended complaint, defendant then refused, [123] and ever since has refused, to accept said abandonment; and that no sufficient grounds existed for abandoning said schooner "Wm. Nottingham" to defendant under the terms and conditions of said policies of insurance referred to in said amended complaint.

II.

That, at the time defendant filed its answer to the original complaint herein, it admitted that it would be liable, under its policies of insurance, covering on said vessel, for its proportion of general average and salvage charges accruing from the preservation of said vessel and cargo, but that the amount thereof was at that time unknown; that since the filing of said answer the firm of Johnson & Higgins, in San Francisco, California, who had been appointed by plaintiff to adjust the general average arising on said voyage, has completed said adjustment; that in and by said adjustment the amount due in general average, including all salvage charges and expenses incurred by said vessel, from defendant, under its aforesaid policies, was the sum of thirty-five hundred and thirty-nine and 38/100 (3,539.38) dollars; that defendant has heretofore paid plaintiff said

sum of thirty-five hundred and thirty-nine and 38/100 (3,539.38) dollars, and thereby fully discharged all of its liability for general average and salvage losses under said policies.

III.

That said schooner "Wm. Nottingham" was unseaworthy at the time she started upon said voyage mentioned in said amended complaint, in that she was leaky and her pumps were [124] not in working order, so that the same could be used to keep said vessel free from water which entered her hull through said leaky condition, and that by reason thereof said vessel commenced to leak and became water-logged in fair weather, immediately after starting upon said voyage; that all losses and damages suffered by said vessel upon said voyage were caused and occasioned by the aforesaid unseaworthiness of said vessel.

WHEREFORE, defendant prays that the action herein be dismissed, and that it may recover its costs and disbursements herein incurred.

IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT &
SHORTS,

Attorneys for Defendant.

Postoffice address:

901 Alaska Building,
Seattle, Washington. [125]

State of Washington,
County of King,—ss.

Frank G. Taylor, being first duly sworn, on oath deposes and says:

That he is the general agent of Fireman's Fund

Insurance Company for the State of Washington, and as such general agent makes this verification for and on behalf of said corporation:

That he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

FRANK G. TAYLOR.

Subscribed and sworn to before me this 24th day of March, 1914.

[Seal] BRUCE C. SHORTS,
Notary Public in and for the State of Washington,
Residing at Seattle.

Due service of the within Answer admitted this 24th day of March, 1914.

CLISE & POE,
Attys. for Plaintiff.

[Indorsed]: Answer to Amended Complaint.
Filed in the U. S. District Court, Western Dist. of
Washington, Northern Division. Mar. 31, 1914.
Frank L. Crosby, Clerk. By S. E. Leitch, Deputy.
[126]

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY, a
Corporation,

Defendant.

Reply.

To the Honorable JEREMIAH NETERER, Judge
of the Above-entitled Court:

Now comes the plaintiff in the above-entitled action and replies to the affirmative matter contained in the answer of said defendant, as follows:

I.

It admits that the defendant refused to accept the abandonment of the said schooner made by plaintiff, but denies each and every other allegation contained in the first paragraph of said affirmative matter.

II.

It admits that defendant has paid plaintiff the sum of three thousand five hundred thirty-nine and 38/100 dollars (\$3,539.38), and admits that Johnson & Higgins, of San Francisco, has made an adjustment in general average arising on said voyage, but denies each and every other allegation contained in paragraph two of said affirmative matter.

III.

It denies each and every allegation contained in paragraph three of said affirmative matter. [127]

WHEREFORE, plaintiff prays as in its amended complaint on file herein.

CLISE & POE,
Attorneys for Plaintiff.

State of Washington,
County of King,—ss.

George F. Thorndyke, being first duly sworn, on oath, deposes and says: that he is the manager of the Globe Navigation Company; that he has read

believes the same to be true.

the foregoing reply, knows the contents thereof and

GEORGE F. THORNDYKE.

Subscribed and sworn to before me this 31st day
of March, 1914.

H. R. CLISE,

Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within reply received this 31st day of
March, 1914.

BALLINGER, BATTLE, HULBERT &
SHORTS,

Attorneys for Defendant.

[Indorsed]: Reply. Filed in the U. S. District
Court, Western Dist. of Washington, Northern Di-
vision. Apr. 13, 1914. Frank L. Crosby, Clerk.
By E. M. L., Deputy. [128]

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*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Corpo-
ration,

Plaintiff,

vs.

FIREMEN'S FUND INSURANCE COMPANY, a
Corporation,

Defendant.

To the Honorable Judges of the Above-entitled
Court:

Pursuant to the order of reference herein and stipulation of counsel, I proceeded with the hearing of testimony on this 30th day of July, 1913. The plaintiff appearing by Mr. H. R. Clise and Mr. Wm. H. Bogle, its attorneys; the defendant appearing by Mr. Ira A. Campbell, of counsel for said defendant. Thereupon the following proceedings were had and testimony offered:

Plaintiff's Testimony.

Mr. CLISE.—I want it stipulated in the record that you admit the allegations contained in paragraphs 9 and 11 of the complaint.

Mr. CAMPBELL.—I will admit that amount of money was paid to the Port of Portland for the purposes stated in paragraph 9, it being understood, however, that that payment was without prejudice to the rights of either party in this litigation.

Mr. CLISE.—You admit the truth of paragraph 11?

Mr. CAMPBELL.—Yes, sir.

Mr. CLISE.—I offer in evidence the original policy of insurance to the Globe Navigation Company. It is agreed that that [131] is the original policy?

Mr. CAMPBELL.—Yes, sir.

Paper marked Plaintiff's Exhibit "A," filed and returned herewith.

Mr. CAMPBELL.—There is a second policy.

Mr. CLISE.—You admit that the other policy is an exact duplicate?

Mr. CAMPBELL.—I would like to see the second policy.

Mr. CLISE.—The policy I set up is a copy furnished me by Mr. Taylor and you admit that in your pleadings. Now, I am introducing one of them. The one alleged in the second cause of action is an exact duplicate of the first, except that the loss is payable to the Globe Navigation Company.

Mr. CAMPBELL.—We will ask for the production of the original policy. We would like to see the original, if you can procure it. We are willing to have a copy of it substituted in the record so that it may be returned, but we would like to have the right to inspect it. If the policy is lost we would make no point of that; if it is in existence we would like to see the original. [132]

[George F. Thorndyke, for Plaintiff.]

GEORGE F. THORNDYKE, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

(Testimony of George F. Thorndyke.)

Q. (Mr. CLISE.) Mr. Thorndyke, state your name, age, business and residence.

A. George F. Thorndyke; shipping business, manager of The Globe Navigation Company; residence, Seattle; age, 47.

Q. How long have you been manager of the Globe Navigation Company, Limited?

A. Six or seven years.

Q. How long have you been connected with The Globe Navigation Company?

A. Twelve years.

Q. In what capacity?

A. Traffic manager and then manager.

Q. How long have you been engaged in the shipping business? A. Twenty years.

Q. Where?

A. Mostly Puget Sound and Alaska—Pacific Coast.

Q. When did you first know of the disaster to the schooner "Wm. Nottingham"?

A. On Saturday afternoon, I think, October 14th, 1911.

Q. How did you receive that information?

A. I received a telephone from Plummer of the Puget Sound Tug Boat Company. He stated that he had received a report from the master of his tug off the Columbia River, that the "Nottingham" had been dismasted, water-logged and abandoned at sea, and that the master and crew were on board the schooner "David Evans," bound for the Columbia River.

(Testimony of George F. Thorndyke.)

Q. You say that was contained in a telegram?
[133]

A. He said it was a telegram. This came verbally to me over the telephone.

Q. Did you receive any dispatch from the captain with reference to it? A. No.

Q. (Showing paper to witness.) Do you wish to change that? A. Yes, I will.

Q. Is that the dispatch you received from the master? A. Yes, sir.

Q. Is A. W. Swenson the master of the "Nottingham"?

A. Yes. That was afterwards; that was not the first information I had.

Q. Do you remember what day of the week October 14th was?

A. I think it was Saturday afternoon. I know the time I got my information was Saturday afternoon. I remember that.

Q. Did you notify the Firemen's Fund Insurance Company of the accident?

A. I do not remember whether I communicated with Taylor that afternoon or not. I did notify them later.

Q. Was that notification verbal or in writing?

A. In writing.

Mr. CLISE.—Do you admit that this is a copy of the notification, Mr. Campbell? You have the original; this is a carbon copy.

Mr. CAMPBELL.—We admit the receipt of the original—if that is a carbon copy.

(Testimony of George F. Thorndyke.)

Q. I show you a paper and ask you if that is a carbon copy of the notice you gave to the Firemen's Fund, of the disaster to the "Nottingham"?

A. Yes, sir. [134]

Mr. CLISE.—I offer this telegram in evidence.

Paper marked Plaintiff's Exhibit "B," filed and returned herewith.

Mr. CLISE.—I also offer this notification in evidence.

Paper marked Plaintiff's Exhibit "C," filed and returned herewith.

Mr. CLISE.—I offer in evidence a certified copy of the wreck report made by the master to the Collector of Customs at Astoria.

Mr. CAMPBELL.—We have no objections to it on the ground that it is a certified copy, but do not admit the truth of the statements made in the report.

Paper marked Plaintiff's Exhibit "D," filed and returned herewith.

Q. When did you first see the schooner after her reported abandonment to you?

A. On the 18th of October.

Q. Where did you see her? A. Astoria.

Q. 18th of October, 1911?

A. Yes, following the accident.

Q. In whose possession did you find the schooner at that time?

A. A watchman who represented himself to be in charge of the vessel for the tug-boat crew that salved her. He was previously a member of the crew of the tug that salved her.

(Testimony of George F. Thorndyke.)

Q. What was the condition of the schooner when you first saw her?

A. She was pretty badly wrecked. She was dismasted. All [135] three aftermasts, the foremast alone standing. Her foretopmast gone. All the sails. All the three aftermasts, the main mizzen and spankermast gone. And all the gear, chain plates twisted and broken off. Deckload had gone down to even with the rails, about even with the rails. The ship had the appearance of being waterlogged. She was deep in the water. The cabin had been gutted by sea water and partitions broken or taken out. Cabin furnishings destroyed. Crew quarters, galley and all quarters in under the fore-castle-head demolished and destroyed.

Q. Were you permitted to go aboard of her when you went to Astoria?

A. When I went to Astoria, but when in Portland I was told to get a permit or I would not be allowed aboard the vessel. The getting of an order from the Court. I was told that I could get a permit from Messrs. Wood & Linthicum. I met Col. Wood and he directed a letter to the watchman aboard the vessel to allow me to go aboard.

Q. (Mr. CAMPBELL.) That is, the salvors of the vessel were the ones that would have prevented you going aboard?

A. The owners of the tug that salved her, the Port of Portland.

Q. The insurance company did not object to your going aboard? A. Oh, no.

(Testimony of George F. Thorndyke.)

Q. (Mr. CLISE.) What was the condition of the schooner, as far as being filled with water or not, at that time?

A. Well, you could not see the hold because she had sufficient lumber on deck, and we did not sound the pumps. But she had every appearance of being water-logged, or nearly so. She was, in my judgment, too deep in the water to be so [136] affected by the deck-load or cargo in the hold and what little she had on deck.

Q. Did the appearance of the schooner itself indicate whether or not she had been deeper in the water than she was at the time you saw her?

A. Oh, yes. She had been deeper at some time.

Q. Were any statements made to you as to how the schooner came to be in the condition she was at the time you saw her?

A. Not at that time. There was only the watchman aboard. At that time the captain of the vessel was with us and he told us she had been in a gale.

Mr. CAMPBELL.—I object to any conversation with the captain.

Mr. CLISE.—You may omit that.

Q. Did anybody accompany you when you first visited the schooner? A. Yes, sir.

Q. Who?

A. Swenson, Mr. Walker and Captain Crow.

Q. How long did you remain on the schooner this first time? A. I should say nominally an hour.

Q. When did you again see the schooner?

A. Oh, I saw her frequently, at various times,

(Testimony of George F. Thorndyke.)

after that. I think the next time I did see her was at St. Johns, after she had been removed from Astoria to St. Johns.

Q. What facilities has the port of Astoria to store cargo or repair a vessel of this kind? A. None.

Q. How did the schooner happen to be removed from Astoria to St. Johns? [137]

A. Well, she was moved there for the purpose of discharging cargo and docking her to see her bottom and determine the whole damage; the result of an agreement with all concerned.

Q. How far was it from Astoria to St. Johns?

A. Nominally 100 miles.

Q. Up the Columbia River?

A. Up the Columbia River.

Q. When you saw the vessel at St. Johns was she in the drydock or not?

A. I saw her in the drydock at St. Johns.

Q. Describe her condition when you saw her there.

A. Her condition along the decks in regard to her rigging, chain-plates and damages above before spoken of, was the same. On the dock we discovered that the port side, her garboard strake was chafed and bruised somewhat, slightly, for pretty nearly its entire length. Otherwise than that there did not appear to be any material damage to her hull.

Q. In whose possession was the schooner all this time? A. The Port of Portland, the salvors.

Q. Did you have the vessel surveyed then at St.

(Testimony of George F. Thorndyke.)

Johns? A. Yes, sir.

Q. Who surveyed her?

A. Mr. Walker and Captain Crow.

Q. Mr. Walker submitted a written survey and specifications? A. Yes, sir.

Q. Based on that survey and specifications, did you call for bids to repair the "Nottingham"?

A. We did.

Q. How many bids did you receive? [138]

A. Four.

Q. I hand you a paper purporting to be the letter-head of the Oregon Drydock Company, dated January 12, 1912, and ask if that is one of the bids that you received. A. Yes, sir, that is one of them.

Q. What is the amount that they offered to repair the vessel, according to specifications, for?

A. \$25,200.

Mr. CLISE.—I offer this paper in evidence.

Paper marked Plaintiff's Exhibit "E," filed and returned herewith.

Q. I hand you a paper purporting to be a bid of the Albina Engine and Machine Works, dated January 12, 1912, and ask if that is one of the bids received. A. Yes, sir, one of them.

Mr. CLISE.—I offer this in evidence.

Paper marked Libelant's Exhibit "F," filed and returned herewith.

Q. I hand you a paper purporting to be a bid from the St. Johns Shipbuilding Company and ask if that is one of the bids received. A. Yes, sir.

Q. In what amount is that? A. \$23,070.75.

(Testimony of George F. Thorndyke.)

Mr. CLISE.—I offer this in evidence.

Paper marked Plaintiff's Exhibit "G," filed and returned herewith.

Q. I hand you a paper purporting to be a bid from the Vulcan Iron Works and ask you if that is one of the bids received by you. [139] A. Yes, sir.

Q. How much is that? A. \$24,600.

Mr. CLISE.—I offer that bid in evidence.

Paper marked Plaintiff's Exhibit "H," filed and returned herewith.

Q. How much was the Albina Engine Works bid? A. \$20,950.

Q. Did you advise the defendant in this action, the Firemen's Fund Insurance Company, of the receipt of these bids and furnish them copies?

A. I do not remember that I furnished them copies. But Captain Crow and, I think, Mr. Hewett knew of the bids and were familiar with them.

Q. Who is Mr. Hewett?

A. He was with the Firemen's Fund in Portland.

Q. You mean he was agent or representative there?

A. I do not remember whether he was their agent. I think he was with them. I think they had another representative there. I think he was prominent in their business.

It is admitted that Henry Hewett was the agent and representative in Portland of the Firemen's Fund Insurance Company.

Q. Do you know the responsibility and general reputation of the parties making these various bids?

(Testimony of George F. Thorndyke.)

Mr. CAMPBELL.—I object as incompetent, irrelevant and immaterial, so long as the parties making the bids complied with the call for bids by tendering a Surety Bond required by the call, or agreemnet to furnish a bond required by the call.
[140]

A. I did not investigate the Oregon Drydock people particularly, because their bid was very high, but I did make inquiries regarding the St. Johns Ship Building Company, and the Albina Engine Works.

Q. When the bid of the Albina Engine & Machine Works was delivered to you, or rather, first, who delivered it to you?

A. A man by the name of Cornfoot.

Q. It is signed William Cornfoot, proprietor?

A. Yes, sir.

Q. Did he make a statement to you at the time he delivered it to you? A. Yes, sir.

Q. What was that?

Mr. CAMPBELL.—I object as incompetent, irrelevant and immaterial and as hearsay.

A. He met me in the lobby of the Oregon Hotel and presented his tender, which was the lowest one that was submitted, and he had with him a man named Mackintosh, Robert Mackintosh, and Cornfoot said, "You will understand that I am simply running the engine works," I think he said on the East side, "and I really have no interest in taking this contract, because there is no considerable amount of the work in connection with this damage,

(Testimony of George F. Thorndyke.)

that would be in my plant, but I intend this for Mackintosh who will have charge of all the work, and will be the man you will look to for the details and that sort of thing."

Q. Did you know Mackintosh?

A. I had met him before, yes.

Q. Did you know what his reputation was in regard to doing [141] work of this character?

Mr. CAMPBELL.—This goes to your knowledge of his reputation?

A. Only from hearsay, reputation, what I had heard. I had heard that he was irresponsible. He had taken other work in Portland and had failed or had been dismissed from it before it was finished, and the owners, or others than himself had finished the work, the owners of vessels.

Q. Was there any offer made at this time to furnish a bond or any bond whatsoever by the Cornfoot outfit?

A. I think he stated that he could furnish a bond if we required it. He did not give me a bond at that time.

Q. Now, if you had been the owner of this vessel or representing the owner of this vessel, if there had been no insurance, would you have accepted this bid by the Albina Engine & Machine Works to repair this vessel? A. Not in the way it was tendered.

Mr. CAMPBELL.—I object as incompetent, irrelevant and immaterial, and as constituting no basis on which, under the terms of the policy, abandonment for constructive total loss can be founded.

(Testimony of George F. Thorndyke.)

Q. You say you would not have accepted this bid?

Mr. CAMPBELL.—I renew my last objection.

A. I would have been fearful of complications and litigation. I would rather pay a thousand or so dollars more to the man that had a good reputation and was competent to do the work .

Q. Acting as the representative of owners of this vessel carrying no insurance, which of these bids would you accept?

Mr. CAMPBELL.—I renew my last objection.
[142]

A. St. Johns Ship Building company.

Q. In the first paragraph of the complaint in this action, there is an allegation that in addition to the amount that you expended for salary as shown by paragraph nine of the complaint, you expended a further sum of \$2452.45. Will you state in detail what constitutes the items making up that sum? You may use this memoranda to refresh your memory.

A. "Crew paid off.....	\$547.17
Shipping Commissioner.....	2.50
Commission to agent.....	5.70
Trip to Astoria, Oct., railroad company	37.50
Railroad fare, meals, berth, etc.	
Trip Oct. 25, 27,.....	33.20
Oregon Railway & Navigation Co.,....	56.70

Q. What was that for?

A. I think that was fares for yourself and myself when we went to Portland.

Long-distance phone.....	\$ 2.30
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(Testimony of George F. Thorndyke.)

Telegrams	11.15
V. Boelting, protest.....	5.00
Northern Pacific Railway	15.20
Railroad Company, trip to San Fran-	
cisco.....	107.00
Trip to Portland	72.60
Clise, trip to Portland and services....	55.50
Clise, trip to San Francisco and	
telegrams.....	188.00
telegrams....	3.00
Thorndyke 2 trips to Portland in Dec..	51.40
Marshal's Fees.....	4.00
Telegrams for December.....	8.23 [143]
Telegrams and long-distance phone for	
Jan.....	4.43
Thorndyke trip to Portland.....	34.43
Captain A. Swenson for personal ex-	
penses account Mr. Brown and self	
for Nov. Dec. and January.....	592.40
One sixth of Port of Portland and	
other claims settled Feb. 8th.....	995.15

Total.....\$2832.33

Mr. CAMPBELL.—I move to strike the answer on the ground that the specifications of the items are indefinite, and a large part of the items are not chargeable in general average.

Q. Take the first item, Mr. Thorndyke, crew paid off, \$547.17. What time does that cover?

A. The time that the crew and officers had joined the vessel until such time as they arrived back in Astoria.

(Testimony of George F. Thorndyke.)

Q. Can you give the dates that would cover?

A. I cannot say, but I should think it was a day or two before the vessel sailed.

Q. When was that?

A. Sometime prior to the 10th day of October. It was about five or six days of October. Sometime prior to the 10th of October. It was probably about the first of October.

Q. Until what date?

A. Until the 14th or 15th of October, I think.

Q. 1911?

A. And the vessel may have sailed from Astoria on the second. She may have sailed from Westport two or three days prior to that.

Q. The complaint alleges that she sailed from Westport on the 2d of October. Now, about this item of \$2.50 paid [144] the shipping commissioner. What was that for?

A. That is an expense item customarily paid the shipping commissioner when he goes from his office to some near place to pay off or sign on a crew.

Q. Was this for paying off or signing on?

A. This was for paying off.

Q. Commission to agent \$5.70?

A. That I cannot explain. I think that is for expenses of telegrams, etc. We had business every day in Astoria and Westport, at the time the "Nottingham" was at Astoria.

Q. Well, at what time were these telegrams sent?

A. After the vessel arrived in Astoria in her damaged condition.

(Testimony of George F. Thorndyke.)

Q. Now, you say, trip to Astoria. You have got here the 17th and 18th of October, Mr. Thorndyke. Tell me generally what that was for?

A. Railroad fares, berth, meals, etc.

Q. This was the trip that you made to inspect the vessel about which you testified, after being notified of the disaster to the ship?

A. Yes, sir.

Q. Then you have a trip to Portland, October 25th and 27th, \$33.20. What was the occasion for that trip?

A. I think it was in connection with the "Nottingham" matters. I may have visited the vessel at that time. It may have been the time it was docked, very likely was at the time we docked the vessel; railroad fares, berth and meals. I was going to see or consult with the attorney for the Port of Portland.

Q. During all this time you were in constant communication [145] with the Firemen's Fund?

A. Almost constantly with Mr. Taylor.

Q. Do you know what the Port of Portland libeled the schooner for, what sum of money?

A. Something over thirty thousand dollars, as I remember, or about thirty thousand dollars.

Q. Were you in communication with the attorneys for the Port of Portland, either personally, or through your attorneys, with regard to obtaining a release of the vessel or putting up a bond, all of which had been communicated to the Firemen's Fund?

A. I think so.

(Testimony of George F. Thorndyke.)

Q. Then you have an item of \$56.70, Oregon Railway & Navigation Company. What do you understand that is for? A. That was for fares.

Q. From where to where?

A. Between Seattle and Portland.

Mr. CLISE.—I will pass these items for the present.

Q. You have stated already that on receipt of this notification from Mr. Plummer, you notified the representative of the Firemen's Fund here in Seattle, on Saturday afternoon, October 14th, 1911?

A. Yes, I think Mr. Taylor and I exchanged telephones that afternoon.

Q. How closely thereafter did you keep the Firemen's Fund advised of what you were doing?

A. Oh, almost daily I guess, for a while.

Q. How did you happen to make the trip to San Francisco on this matter?

A. I went there for the purpose of agitating the matter of [146] settlement with the underwriters and if possible avoid this litigation.

Q. Now, was there any request made from the Firemen's Fund that you should go there?

A. I think I was informed that Mr. Levinson would be glad to see you and myself.

Q. Who is Levinson?

A. I think he is manager and treasurer of the Firemen's Fund. Head of the affairs of the Firemen's Fund, in San Francisco, I believe.

Q. Now, you have spoken of Captain Crow accompanying you to the vessel. How often did he

(Testimony of George F. Thorndyke.)

accompany you in your examination of the "Nottingham"?

A. I do not remember his going to the "Nottingham" but once after that and that was the day she was docked.

Q. Did you have any conversations or communication with Captain Crow in the matter?

A. Oh, yes, various communications or conversations.

Q. Who was Captain Crow?

A. He was surveyor for the San Francisco Board of Underwriters in Portland.

Q. Was he representing the Firemen's Fund in this matter or not?

A. I understand so, as surveyor. [147]

Cross-examination:

Q. (Mr. CAMPBELL.) Mr. Thorndyke, who was it that said Mr. Levinson would be glad to see you?

A. I think Mr. Lebogeaux or—

Q. He was your agent? A. No.

Q. Who was Mr. Lebogeaux?

A. He was with or head of the firm of Johnson-Higgins & Co. on this coast.

Q. Who is Johnson-Higgins?

A. Insurance brokers and marine adjusters.

Q. They were the people that acted as brokers for you in placing this insurance? A. I think not.

Q. They were the people who made up the average adjustment? A. Yes, sir.

Q. What you went down there for was to endeavor

(Testimony of George F. Thorndyke.)

to arrange with the Firemen's Fund for a settlement, without prejudice to the rights, either of your company or the Firemen's Fund, of the salvage claim that was being put forward by the Port of Portland, was it not?

A. I think that was not taken up at that time.

Q. Was not that the primary purpose of that visit?

A. I do not remember it so. I think we felt we had a claim there for damages, the loss of the vessel, and we wanted to discuss the whole subject with a view of getting a settlement.

Q. The Firemen's Fund had declined to accept the abandonment that you had tendered to it?

A. Oh, yes. [148]

Q. Have you with you the specifications and the call for the bids? A. I did at the time.

Q. Have you them with you now?

Mr. CLISE.—I have a set of the specifications and survey. I intended to offer them in evidence when I put Mr. Walker on the stand.

Q. Who prepared the call for the bids, you or Mr. Walker?

A. I have forgotten whether Mr. Walker or myself or Captain Crow. I think Captain Crow told us who were responsible people, and told us the names of some of the firms to refer the matter to. I do not believe we called for any tenders, otherwise than on one of my visits there I submitted the specifications to these firms and asked them for a tender.

Q. Captain Crow, you say, gave you the names of

(Testimony of George F. Thorndyke.)

the responsible parties in Portland who might bid on the repairs for this vessel?

A. He gave me the names of some parties in Portland who might bid on this vessel.

Q. You delivered these specifications to these parties and asked for a bid?

A. As I remember, yes. Whether I gave it to all that he gave me the names of or not I do not know. I do not know that I gave it to all the names he submitted to me.

Q. But among the parties that you did give the specifications to and ask for bids, were these parties whose bids you have identified, and which have been offered in evidence?

A. We gave them the specifications.

Q. And asked for a bid on the specifications?
[149]

A. Yes, sir.

Q. These specifications were for the repair of the damage to the vessel which resulted from this trouble at sea?

A. Yes, sir.

Q. You say these specifications were made up by Mr. Walker, your surveyor?

A. Yes, made by Mr. Walker.

Mr. CLISE.—Here is the call for bids. (Showing paper to counsel.)

Q. Was there not another call for bids, other than what is contained under the terms and conditions and the specifications?

A. Yes, I think there was a communication on our letterhead a brief letter.

(Testimony of George F. Thorndyke.)

Q. I will have you look at this letter, which is at the head of the specifications, and see if you recollect having sent that out together with the specifications?

A. Yes, I think that is what I had in mind. It was not addressed to the various firms but simply attached.

Q. Simply addressed to all who might bid?

A. It was not addressed to them at all. The specifications were enclosed in an envelope or handed to them and it was attached to the specifications.

Q. Do you recollect having sent that letter out with the specifications?

A. We sent a letter along. This type is different than ours.

Q. Will you read it over and state whether you recollect sending out a letter in substance the same as this one?

A. Yes, I think that is the same as the one attached to the specifications we sent out.

Mr. CAMPBELL.—I offer this letter in evidence. [150]

Paper marked Defendant's Exhibit "1" filed and returned herewith.

Mr. CAMPBELL.—Have you, Mr Clise, the supplementary report of Mr. Walker, dated March 4th and March 27th, which I requested this morning?

Mr. CLISE.—I have it here.

Q. When was the "Nottingham" last docked before this trouble in October 1911?

A. In April that year.

Q. When was she last caulked?

(Testimony of George F. Thorndyke.)

A. I could not say at this time.

Q. Was her bottom caulked at the time of that docking? A. No, I think not.

Q. Can you refer to your records and ascertain for me when she was last caulked?

A. Undoubtedly.

Q. Will you do so and furnish me with the date?

A. Yes, sir.

Q. Do you know the exact date in April when she was last docked?

A. I can ascertain it. I have a voucher for the expenses.

Q. Do you recollect when her bottom was last painted? A. At that time.

Q. At the time she was docked? A. Yes, sir.

Q. Where was she docked?

A. Docked, as I remember it, in Sidney.

Q. New South Wales? A. Yes, sir.

Q. And proceeded from Sidney to Portland, direct? [151] A. Yes, sir.

Q. To load outward again on this voyage in question? A. Yes, sir.

Q. When was she last resalted before the trouble in October, 1911?

A. That I could not say. We salted the vessel at various times.

A. Can you tell from your statement?

A. Well, I can tell when she was salted the last time before that, after she was returned from the east, from her Atlantic voyage.

Q. What date was that?

(Testimony of George F. Thorndyke.)

A. We had a new plank on her and she was opened up and we filled her with salt, that is filled all the top courses.

Q. What date was that?

A. I will say 1908, about that.

Q. Can you ascertain that date?

A. Yes, sir.

Q. Will you do so.

A. Yes, sir. If you will allow me to go back. I will change my testimony: The vessel was recaulked in East Boston at the time of this Atlantic voyage in 1907.

Q. You can ascertain that date for us?

A. Yes, sir. Nine thousand dollars was expended on the vessel at that time.

Q. You say you received no letter from the master detailing the trouble that he passed through after leaving Astoria in October?

A. I do not remember it, and I could not find anything about it. So much was carried on by telephone. I think I waited [152] a good while, until the official statement to the adjusters. But I may be mistaken as to that. But I have not been able to locate it.

Q. Who was the adjuster that received that statement? A. Mr. Becket.

Q. Of Johnson & Higgins?

A. As I remember it.

Q. In Seattle?

A. Yes, in Seattle. He made a statement of it. I know it was customary to take captains in to him.

(Testimony of George F. Thorndyke.)

Q. She was docked on the Port of Portland's dock at St. John's? A. Yes, sir.

Q. That was December, 1911? A. Yes, sir.

Q. Do you remember Mr. Cornfoot of the Albina Engine Works calling on you at the Oregon Hotel?

A. Yes, sir.

Q. At the time he submitted his bid to you?

A. Yes, sir.

Q. Do you recollect his having produced to you a letter at that time from a surety company, in which the surety company stated that it would furnish a bond as called for in the specifications or call for bids?

A. I remember something, Mr. Campbell, but as it is in my mind now, it was a letter from some trust company or bond company, and it was referring to one party and the tender was signed by another party.

Q. Do you remember such a letter being produced to you by Mr. Cornfoot? [153]

A. I think there was a communication, something of that sort.

Q. Do you recollect at that time Mr. Cornfoot stating to you that he would repair the vessel in forty days for an additional one thousand dollars over and above his bid? A. I do not remember that.

Q. You would not say that he did not?

A. No, I would not say that he did not. I do not remember.

Q. She was towed to the dock of the Port of Portland in December 1911, was she not?

(Testimony of George F. Thorndyke.)

A. I think so.

Q. And she was not removed from there until subsequent to May of 1912? A. That is a fact.

Q. During that period did you maintain a man aboard the ship or was she watched from the dock itself?

A. We kept the master and mate up there a long time after the vessel arrived at St. Johns.

Q. That was into February, was it not?

A. I do not remember now.

Q. And then what?

A. Then we wanted to put the master in another vessel. And the mate wanted to leave our employ and seek other employ, and I made an arrangement with the dock master Johnson to care for the vessel for a short period. Then afterwards I sent a man from Seattle, Howell by name, to live on board the vessel.

Q. That was subsequent to May, was it not?

A. I should think so. I would not state definitely; but he was on there during last summer, I know [154]

Q. When did you bring her to Seattle?

A. I should judge September or October last; may be a month or so before. These things are not very well fixed in my mind now.

Q. You let the master go about the 6th of February, didn't you?

A. It might have been as early as that.

Q. You furnished a statement of his wages during that period to Johnson & Higgins, who made up the

(Testimony of George F. Thorndyke.)

average adjustment, didn't you?

A. I don't know; the adjustment will show for itself.

Q. Now, during the interim, from the time she was taken from the Port of Portland until after May, she was exposed to the weather, without having her decks wet down or her sides wet down, was she not?

A. During what period?

Q. During the time after she was taken to the Port of Portland dock until after May?

A. Oh, no. She had the hose stretched all the time, the decks were wet and washed down frequently.

Q. Did you see it?

A. I saw the arrangement there for the hose suction-pipe overboard over the side.

Q. Did you see her wet down at all?

A. I think I did.

Q. How many times did you visit that vessel from the time she was docked in December up until May?

A. I would not state now; I would not attempt to state.

Q. Not more than two or three times, did you?

A. I would not state. [155]

Q. When you were there, you were only there for a short period during the day? A. That was all.

Q. She was finally repaired by the Seattle Dock and Construction company, was she not?

Mr. CLISE.—I object as incompetent, irrelevant and immaterial. This is covered by the stipulation.

Mr. CAMPBELL.—I will reserve the right to call

(Testimony of George F. Thorndyke.)

Mr. Thorndyke on that point. I do not consider that it is excluded by the stipulation. I will wait until you have finished with Mr. Walker before I decide. I have no question in my mind as to our right to inquire into the repairs on the vessel, under the stipulation.

Q. Who did you talk with in Portland that told you that Mackintosh was irresponsible?

A. I do not remember whether I got the information at that time or got it at other times.

Q. I ask you who you talked with from which you gained this general reputation?

A. I do not remember.

Q. Cannot you give the name of any one?

A. I cannot give the names. I talked with Walker about him.

Q. Your surveyor? A. Yes, sir.

Q. Who else?

A. I think I talked with Johnson of the drydock company.

Q. The Port of Portland Drydock company?

A. Yes, sir.

Q. Was he an employee of the Port of Portland?

A. As I remember it. [156]

Q. What did Johnson say to you?

A. I cannot give the conversation. I got the information in Portland that Mackintosh was irresponsible.

Q. That was the impression that you got?

A. That is the impression that I got.

Q. You cannot give me any specific statement

(Testimony of George F. Thorndyke.)

given to you by any particular man?

A. Nobody addressed a letter to me. I cannot remember any particular one, but that was the opinion.

Q. What was the case on which he fell down?

A. The "Elder," I understand, very badly.

Q. That was the time she was wrecked at Gobel?

A. Repairing after that, yes.

Q. Who told you that?

A. I do not remember now.

Q. What did they say about that?

A. I think he was the dock-master and had to be dismissed in the middle of the work.

Q. You say you think; however you do not know it yourself? A. I was not there, no.

Q. All you know is what some one told you?

A. That is all I got from inquiries.

Q. Who told you and what did they say?

A. I do not remember, as I told you before.

Q. Will you look up these matters I have asked you about and let us know in the morning?

A. Yes, sir. [157]

Redirect Examination.

Q. (Mr. CLISE.) Mr. Thorndyke, what, in your opinion, was the value of the hull of the "Nottingham," that is the value as she stood, exclusive of cargo as you saw her in the harbor of Astoria on October 16, 1911?

Mr. CAMPBELL.—I object as incompetent, irrelevant and immaterial; and for the reason it forms no basis on which abandonment can be made as for constructive total loss under the terms and conditions

(Testimony of George F. Thorndyke.)

of the policy covering this vessel.

A. She was worth but little or nothing. No more than anywhere from three to four thousand dollars. That would be a speculation.

Mr. CAMPBELL.—You force me to go into that stipulation. I will offer this stipulation.

Mr. CLISE.—I do not intend to ask any question that is a violation of this stipulation. I am not touching the “Nottingham” after the first day of June. You can ask anything you wish prior to the time we made the stipulation and I will not make any objection.

Q. What, in your opinion, Mr. Thorndyke, would have been the value of the “Nottingham,” if she had been repaired in accordance with the plans and specifications prepared by Mr. Walker, and upon which you asked for bids?

Mr. CAMPBELL.—This action is laid upon two policies covering actual and constructive total loss, and the information sought by the question is incompetent, irrelevant and immaterial, for the reason that it forms no basis on which an abandonment as for constructive total loss, under the terms and conditions of the policy, could be made. [158]

A. Not in excess of twenty-five thousand dollars.
(Witness excused from the stand.) [159]

[Testimony of Frank Walker, for Plaintiff.]

FRANK WALKER, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Q. (Mr. BOGLE.) State your name, age, residence and occupation.

(Testimony of Frank Walker.)

A. Frank Walker. Age, forty-seven years; residence, Seattle, Washington. Occupation, marine surveyor, consulting engineer and naval architect.

Q. How long have you resided in Seattle?

A. I have resided on Puget Sound about eighteen years. Eight years in Seattle and ten years in Tacoma.

Q. How long have you been engaged in business as a marine surveyor? A. About sixteen years.

Q. And during that same time have you been a naval architect and marine engineer?

A. All of the time.

Q. Have you been actively employed during that entire time in these vocations? A. All of the time.

Q. Were you at any time during the fall of 1911 called upon to inspect the schooner "William Nottingham" after the disaster which occurred to her?

A. Yes, sir.

Q. At what time?

A. I cannot exactly give the date offhand, but somewhere in October.

Q. By whom were you requested to act in the matter?

A. By Mr. Thorndyke, manager of the company.

Q. What did you do?

A. I proceeded to Astoria and examined the vessel as she lay [160] at anchor.

Q. State what her condition was as you found her at that time?

A. I found the vessel in a very wrecked condition. Dismasted with the exception of the fore lower mast.

(Testimony of Frank Walker.)

All of her rigging, sails and gear gone with the exception of the foresail and one or two headsails, I cannot say which. And her chain plates were broken off and deck-load disarranged and part of it gone. The vessel had considerable water in her. Her cabins were gutted. The forecastle was gutted and the galley and the engine-house gutted. The remaining fore-rigging that was standing was damaged. She was a general wreck.

Q. What was the condition of her furniture and ship's stores? A. It was destroyed.

Q. Was she filled with water?

A. She had been pumped out by that time. There was some water in her, I cannot say how much. I did not sound her at the time.

Q. How was she loaded, with lumber?

A. Loaded with lumber and part of it was missing.

Q. Part of the deck-load?

A. Part of the deck-load, yes.

Q. Could you tell from your inspection whether she had been submerged prior to the time you saw her?

A. It gave every appearance of the main deck having been considerably under water, and a lot of water in the cabin and storeroom, all of which were above the main deck.

Q. Were there any facilities at Astoria for repairing the vessel?

A. Not to my knowledge. [161]

Q. Were there any facilities there for discharging cargo in order to make an inspection of the vessel and

(Testimony of Frank Walker.)

ascertain her condition and damage or make repairs?

A. I am not well acquainted with Astoria. I could not say.

Q. You went down to Astoria with Mr. Thorndyke, did you? A. With Mr. Thorndyke, yes.

Q. And that was on or about the 16th of October, 1911, was it not?

A. I believe it was the 18th. My report will show, the survey report that I made was dated the day I went aboard.

Q. Do you know whether or not Mr. Thorndyke, as the representative of the owner at that time, sent an abandonment of the vessel to the underwriters?

A. I do not know, only I think I remember he had sent them such a message.

Q. Mr. Walker, considering the condition of the vessel at the time you saw her, the location and distance from any port where she could be repaired; the risk or peril, if any in getting her to a port where she could be repaired, I will get you to state whether or not in your opinion there was any degree of probability that that vessel could be taken to a port where she could be repaired, and could be repaired and restored to the condition she was in before the accident, at an expense not exceeding fifty per cent of the cost of making the repairs?

Mr. CAMPBELL.—I object as incompetent, irrelevant and immaterial, for the reason that none of the facts inquired of would constitute a basis for an abandonment as for a constructive total loss under the terms and conditions of the policies covering on

(Testimony of Frank Walker.)

the vessel against actual and [162] constructive loss.

A. I do not catch the question.

Q. The question is, whether in your opinion, based upon your experience in shipping matters and repair of ships, there was any probability or reasonable probability that this vessel lying where she was at Astoria at the time you saw her, in the condition she was in, could be removed from there to a port where repairs could be made, and the necessary repairs made to the vessel and restore her to the condition she was in before the accident, at an expense of less than fifty per cent of her value?

A. You mean her lying as she did there?

Q. At an expense of less than fifty per cent of her insured value. She having been valued prior to the accident at forty-five thousand dollars.

A. Do I think she could be safely transported to a place to make the repairs for the matter of twenty thousand dollars?

Q. Was there any reasonable doubt of the probability that she could have been removed in safety and these repairs made at an expense of less than \$22,500?

A. You could not have removed the ship and made the repairs for fifty per cent of her insured value.

Mr. CAMPBELL.—My objection goes to the substance of all these questions.

Mr. BOGLE.—Yes, sir.

Q. Did you have any further connection with the vessel while she lay at Astoria? A. No, sir.

(Testimony of Frank Walker.)

Q. When did you next see or have any connection with the [163] vessel?

A. The next time I visited the ship at St. Johns drydock, Portland.

Q. At whose request?

A. At the request of Mr. Thorndyke.

Q. In what capacity and for what purpose?

A. For the purpose of making a survey on the vessel.

Q. Did you make a survey? A. I did.

Q. Did anyone join you in making the survey?

A. Captain Crow of the San Francisco Board of Underwriters.

Q. Who was he representing on the survey?

A. He was representing the underwriters interested.

Q. At what time was this survey made?

A. The report will show. I cannot remember the date.

Q. Where was the vessel lying at the time you made the survey?

A. She was on the drydock at St. Johns.

Q. Had she been discharged of her cargo?

A. The cargo was on the wharf, part of it.

Q. Where was the balance of it, had it all been discharged from the ship?

A. Yes, it had all been discharged from the ship at that time.

Q. Had the water been pumped out?

A. Oh, yes, she was quite dry.

Q. Had she been cleaned up?

(Testimony of Frank Walker.)

A. No, there had been nothing done in the way of cleaning up.

Q. Did you make a report of your survey? [164]

A. I did.

Q. Look at the document I hand you and state whether that is the report which you made of your survey at that time.

A. Yes, sir, that is my report.

Mr. BOGLE.—I offer this in evidence, the report and specifications as prepared by the witness.

Mr. CAMPBELL.—I desire to reserve the right to object, until I have had an opportunity to inspect the specifications.

Paper marked Plaintiff's Exhibit "I," filed and returned herewith.

Q. Did you on a subsequent occasion make an inspection and report of survey on that vessel?

A. Yes, sir.

Q. At what time?

A. I cannot say. I made a written report and it shows.

Q. Look at the paper I hand you and state if that is the one you made, and state when you made it.

A. Yes, sir, that was made by me in March.

Mr. BOGLE.—I offer this in evidence.

Mr. CAMPBELL.—I desire to reserve my right to object to this also.

Paper marked Plaintiff's Exhibit "J," filed and returned herewith.

Q. Please explain why you made this second supplemental report of survey?

(Testimony of Frank Walker.)

A. In making the first survey on the vessel, I made it with Captain Crow representing the San Francisco Board of Underwriters. All in the first specifications were agreed to by Captain Crow and myself, but he would not agree to some of the other items that I claimed at the [165] time, and therefore I individually made that report to the owners.

Q. Does this supplemental report of survey set forth damages that had been received by the vessel at the time of the accident in October, 1911, and repairs that were necessary on account of these damages?

A. Yes, sir. Partly the work recommended in that supplemental survey was to find the leak in the vessel.

Q. Then aside from the work that is recommended in this supplementary report of survey going to the location of the leak, the other items mentioned are damages received by the vessel in this disaster of October? A. Yes, sir.

Q. Was the leak the result of the disaster that had happened to the vessel?

A. That I cannot say. It was claimed to be a leak that we could not find. There was a leakage supposed to exist that we could not find when she was on the drydock.

Q. Was there any way to locate that except by doing the work that is recommended in this supplemental report of yours?

A. Not to my knowledge.

Q. You know nothing about whether there was a

(Testimony of Frank Walker.)

leak in the vessel prior to the commencement of this voyage in October, do you?

A. No, I could not say.

Q. Mr. Walker, considering the condition of the vessel as she lay at Astoria at the time you saw her on or about the 18th of October, 1911, in your opinion was there any risk of loss or further damage to the vessel incurred in undertaking to take the vessel from there to St. [166] Johns for repairs?

Mr. CAMPBELL.—I object as incompetent, irrelevant and immaterial, for the reason it forms no basis on which to predicate an abandonment for constructive total loss under the terms and conditions of the policies.

A. The usual risk taking a vessel up the river.

Q. Was there any more risk taking a vessel in her condition than taking a vessel in good repair?

Mr. CAMPBELL.—I renew my last objection.

A. Yes, I think there was.

Q. Was that risk slight or considerable?

Mr. CAMPBELL.—I renew my objection to this same line of questions.

A. The vessel would be harder to handle, especially providing she had any water in her.

(Previous question read to witness.)

Mr. CAMPBELL.—It is stipulated that my objections run to this line of examination without my repeating my objections to each question?

Mr. BOGLE.—Yes, sir.

A. I think there was great risk of the vessel being stranded on some of the bars along the river.

(Testimony of Frank Walker.)

Q. Mr. Walker, were you present when the bids for repairs on the vessel were received?

A. No, sir.

Q. Did Mr. Thorndyke representing the owner of the vessel have any consultation with you in regard to the responsibility or reliability of the bidders?

A. Yes, sir.

Q. About when was that? [167]

A. I really could not say when it was. It was after he had received the bids and was considering them.

Q. Did he at that time inform you of the statement of Cornfoot that the bulk of the work under his bid, if awarded to him, would be done by Mackintosh?

Mr. CAMPBELL.—I object as hearsay.

A. He did inform me so.

Q. Do you know the Mackintosh referred to, by reputation? A. Yes, sir.

Q. What did you advise Mr. Thorndyke with respect to the bid of Cornfoot, or his company, in view of the statement that Mr. Thorndyke had made to you, that Cornfoot had said that Mackintosh would be in charge of the work?

A. I advised Thorndyke not to consider the bid.

Q. Why?

A. In the first place, the people *that* were not in that business themselves, they were in an outside business in a small way, not fitted and not equipped, and this Mr. Mackintosh had no equipment himself. And I further objected to Mackintosh owing to pre-

(Testimony of Frank Walker.)

vious experience with the man.

Q. What was the nature of the previous experience that you had had?

A. Mackintosh was irresponsible.

Q. Do you know what his record had been in the past with respect to completing contracts within the time specified and according to the terms of the contract?

A. I know that his reputation is not good around Portland, and I had personal experience.

Mr. CAMPBELL.—I move to strike that portion of the answer [168] as not responsive to the question.

A. Of his irresponsibility.

Q. You mean by irresponsibility, financial irresponsibility or unreliability in doing work within the time or according to the terms of his contract?

Mr. CAMPBELL.—I object as leading.

A. I do not know anything about his financial standing. I am talking about his general character, the way in which he conducts his work.

Q. If you had been the owner of this vessel and she had been uninsured, would you have accepted that bid under the circumstances?

A. No, sir, not under any consideration.

Q. Mr. Walker, did you at any time invite bids, or did Mr. Thorndyke to your knowledge, invite bids upon the work called for in your supplemental report of survey?

A. I think Mr. Thorndyke did, I did not.

Q. Did you see the bids?

(Testimony of Frank Walker.)

A. I have seen it since.

Q. Look at the paper I now hand you, and state if that was the bid he received for that work.

A. Yes, sir.

Mr. BOGLE.—I offer in evidence the paper identified by the witness.

Mr. CAMPBELL.—I object as a self-serving document. It is incompetent, irrelevant and immaterial for the reason we have not the right to cross-examine the bidder.

Paper marked Plaintiff's Exhibit "K," filed and returned herewith.

Q. Mr. Walker, are the prices named in this bid, exhibit [169] "K," for the various items of work called for there, reasonable?

A. All but one item. I objected to it when it was submitted to me.

Q. What item was that?

A. The item number 6, for removing wood and cauking back of the bulwark stanchions. The bidder did not quite understand what was wanted of him. He did not understand what was called for there. And he bid for very much more work on that one item than we intended.

Q. What is the bid on that one item?

A. \$755.

Q. What would have been the reasonable value for that work?

A. For what we would require there would be about half that price, say about four hundred dollars.

(Testimony of Frank Walker.)

Q. Were the prices on the other items reasonable, in your judgment?

A. The other prices appear reasonable.

Q. Mr. Walker, were the repairs called for in that supplementary report and survey, covered by this bid of Hall Brothers Marine Railway & Ship Building Company, repairs made necessary by the accident to the vessel in October, 1911? A. Yes, sir.

Q. Could the vessel have been put in good seaworthy condition as she was in prior to the accident, without making these repairs?

A. Not in my estimation.

Q. Mr. Walker, considering the condition of the vessel as she lay at Astoria, at the time you saw her in [170] October, 1911, the distance from any port where she could be repaired, the risks of getting her to such port and the expense of repairs, what would you consider was the reasonable value of the vessel at that time?

Mr. CAMPBELL.—I object for the reason that it is not an inquiry as to facts which would constitute a basis of abandonment as for constructive or total loss under the terms and conditions of the policies.

A. That is the value of the vessel at that time?

Q. At that time.

A. At that time I considered her value practically nothing.

Q. Mr. Walker, if the vessel, after she was taken to St. Johns, had been repaired according to the specifications of your first report of survey, what would

(Testimony of Frank Walker.)

have been her value after these repairs were completed?

A. In the neighborhood of tewnty-four or twenty-five thousand dollars at that time.

Mr. CAMPBELL.—My objection runs to this line of examination, that it does not constitute any basis for abandonment.

Cross-examination.

Q. (Mr. CAMPBELL.) Were any bids invited from others than Hall Brothers on this supplementary report? A. I do not know.

Q. When did you visit the vessel, Mr. Walker?

A. I previously stated somewhere about October 18th, I think it was.

Q. Where was she then? [171]

A. In Astoria.

Q. How long did you remain there?

A. About an hour.

Q. Aboard the vessel? A. Yes, sir.

Q. What water was she drawing at that time?

A. I could not say.

Q. Deep draft?

A. She was deep in the water, yes.

Q. Deck-load gone down to the rails?

A. Somewhere about that.

Q. Still her deck was covered with lumber?

A. Her deck covered with loose lumber.

Q. Her mainmast, mizzen and spanker-masts were gone? A. Yes, sir.

Q. And her cabins gutted?

A. The cabins were gutted.

(Testimony of Frank Walker.)

Q. And her rigging and foremast damaged?

A. Yes.

Q. And more or less damage around her fore-castle-head?

A. Yes, and her poop was badly damaged on the port side.

Q. You were not able to go down into the body of the vessel?

A. No, not into the hold of the vessel at all.

Q. Were not able to see below her water-line at that time?

A. Not able to see anything on the main deck itself, except in the cabins and under the fore-castle-head.

Q. When did you next visit the vessel?

A. I think it was in December.

Q. Between what dates? [172]

A. My survey report will give you the date; I cannot remember the dates.

Q. Refer to it and refresh your memory.

A. On December 21st, it says here.

Q. She was then at the dock at St. Johns?

A. At the Port of Portland Drydocks at St. Johns.

Q. When did you next visit the vessel?

A. I really cannot say. I believe it was in May, sometime.

Q. How much was your bill for services to the owners, your entire bill?

A. I forget; my bill is in.

Q. \$750? A. I think it was, yes.

(Testimony of Frank Walker.)

Q. Is this a correct statement: For services in connection with this case including the trip to Astoria, October 17 and 18, 1911; trip to Portland, December 20 and 21; trip to Portland, May 3 and 4, 1912, and services, besides reports on same dated October 18, December 21, and January 21, 1912; also supplemental reports dated March 4th and March 27th, 1912; consultations at various dates with owners in connection with adjusters, underwriters and surveyors and attorneys, together with expense vouchers attached?

A. I think that is it in detail.

Q. So that you did not see the vessel from the 21st of December, 1911, until the 3d and 4th days of May, 1912.

A. Yes, I saw her between that time.

Q. When? A. Several times, but not officially.

Q. Where is the Port of Portland dock located?

A. St. Johns. [173]

Q. How far is that located from Portland?

A. About seven or eight miles.

Q. How did you get down there?

A. Two ways. By street-car and by launch.

Q. Takes the greater part of half a day to get down?

A. No, about an hour. Say an hour to get to the ship.

Q. You visited her only between these dates?

A. I said on December 21 and 22.

Q. But you did not visit her again until May 3d or 4th?

(Testimony of Frank Walker.)

A. You asked me if I saw her. I saw her several times.

Q. Did you visit her between December 21 and May 4th? A. No, I did not go aboard.

Q. You saw her in passing up and down the river?

A. I was only passing alongside of her.

Q. But you never went aboard of her during that time? A. I had no occasion to.

Q. You did not go aboard of her?

A. I said I did not go aboard of her.

Q. How much did that vessel draw loaded with a full cargo of lumber? A. I do not know.

Q. What would your judgment be?

A. I really do not know what she draws.

Q. Did you ever know of her loading with lumber at Portland and proceeding to sea down the Columbia?

A. No, I do not recollect her loading at Portland.

Q. Did you ever see her type of vessel load at Portland and go to sea from Portland? A. Yes.

Q. Would she draw more water or less water when she had a [174] full cargo on as compared with when she had lost all of her deck-load down to the rails?

A. Depends on whether she had water in her.

Q. Assuming that she had nothing but lumber in her?

A. With nothing but lumber in her she would draw less water.

Q. When? A. With half of the deck-load gone.

(Testimony of Frank Walker.)

Q. Assuming that at the time she was towed from Astoria to Portland that all the water had been pumped out of her, that she would draw less water or more water than when fully loaded?

A. She would draw less water.

Q. Astoria is located at the mouth of the Columbia River, is it not? A. Yes, sir.

Q. It is a broad navigable stream, is it not?

A. In places.

Q. Navigable stream to Portland for ocean going steamships and vessels, is it not? A. Oh, yes.

Q. And a highway for a very large volume of commerce?

A. I do not know what commerce there is on the river; there is quite a little.

Q. Portland is the principal port on the river?

A. Yes, sir.

Q. And towage of vessels up and down the river is a matter of very frequent occurrence?

A. Very frequent occurrence.

Q. Astoria is a very small place, is it not?

A. Yes, it is a very small place. [175]

Q. Vessels are not exposed to the weather at all in towing from Astoria to Portland?

A. Not to any very great extent.

Q. You would not get in any sea of any size on the Columbia? A. No, none to speak of.

Q. Do you know when she was towed from Astoria to Portland whether the water had been pumped out of her?

A. I do not know anything about it.

(Testimony of Frank Walker.)

Q. You did not see her between the time you visited her in October and the time you saw her on the dock? A. No.

Q. I notice that the opening part of your survey report, Mr. Walker, speaks of abstracts taken from the statements made by the master. What do you mean by abstracts from the statements of the master?

A. Generally in making a survey we mention the matters stated in the master's statement of what the trouble has been, the dates, and how it occurred and that sort of thing. We usually take out the main items and incorporate them in the report, to give those interested an idea of what it is about.

Q. Were these statements of these matters in writing from which you took this abstract?

A. Yes.

Q. Where did you see them?

A. The master's own statement to me.

Q. Have you a copy of the written statement?

A. No.

Q. What became of it?

A. I do not know. [176]

Q. Did you deliver it to Thorndyke?

A. No. It was a statement—a copy I think of the statement was also given to the adjusters.

Q. Johnson & Higgins? A. Yes, sir.

Q. Is it a fact that the master stated to you this: "That the vessel loaded a full cargo of lumber at Westport, Oregon, and on September 26th vessel then being loaded and ready to proceed at about

(Testimony of Frank Walker.)

4:40 P. M. of same day the tug was made fast to the ship and started for the mouth of the slough, all going well until closely approaching the entrance of said slough when vessel took the ground and remained fast until the next high tide on the following morning when she was pulled off by the tugs 'Walla' and 'Oklahoma' and taken to an anchorage at Astoria"? A. Yes.

Q. Did he also state to you "That on October 2d vessel sailed from Astoria to Callao, Peru"?

A. Yes, that is his statement.

Q. Did he also state to you "That nothing worthy of note occurred until October 4th at about 2 P. M., when it was discovered that the vessel was making water rapidly"?

A. Whatever is there is what the master stated to me.

Q. He made that statement to you that I have just read?

A. Yes. There might be some errors in dates or hours.

Q. But in substance that is what he stated?

A. Yes, sir.

Q. Did he also state to you that "the hand-pumps were started and it was found that by pumping about one hour in four the water could be kept down"? [177]

A. Yes, sir.

Q. Did he also state that "On October 6th the vessel was put on the starboard tack and as soon as this was done it was found that she made water

(Testimony of Frank Walker.)

more rapidly and in a short time it was impossible for the hand-pumps to keep her free"? Did he state that? A. That was taken from his statement.

Q. Did he state, "An attempt was made to start the steam-pump which, however, failed to work"?

A. That is his statement.

Q. I want you, Mr. Walker, to take this photograph and to designate by drawing upon it a line from the point to the margin and put at the end of each line a number to identify it. I will ask that the photograph be identified by the commissioner. (Photograph marked "2" for identification.) I wish you to point on photograph 2 the stems of the masts that may be there. Just draw a line to the margin and number it.

A. Here is one that I mark 1.

Q. That is the main mast? A. Yes, sir.

Q. Are either of the other masts that are mentioned shown on this photograph?

A. Here is the mizzen. (Marked 2.)

Q. Now, will you tell me what are called mast wedges and coats?

A. When the mast is set in between the partners there is a space of about—in this case about four inches all around, two and a half to three inches all around. That is left for wedges, what we call wedges, wedges forced down from the [178] top around the mast. Then there is a canvas coat put over these. They are caulked and a canvas coat put over for extra protection, to make it water-tight.

Q. That is down around the hole which is made in

(Testimony of Frank Walker.)

the deck for the mast to pass through, and the hole is larger than the mast itself?

A. Yes, sir. To hold the mast tight to the deck, wooden wedges are put in around the mast, between the mast and the deck.

Q. How high do the wedges extend above the deck? A. Five or six inches.

Q. Then these are called the mast wedges?

A. Yes, sir.

Q. And above the wedges there is fastened a piece of canvas around the mast?

A. The mast coat goes over that.

Q. This piece of canvas?

A. Yes, it is shrunk up into the form of a circle around the mast, and then around the wedges, with a lead ring around the foot, a small coaming around.

Q. So that it forms a sort of tent around the base of the mast? A. Yes, it covers up the wedge tops.

Q. As a protection for the tops? A. Yes.

Q. How high does this protection extend above the deck?

A. Perhaps 15 or 16 inches; depends on the height of the wedges.

Q. What are called the chain-plates?

A. The chain-plates are the plates that are bolted through the ship's sides, to which the shrouds are attached. [179] by means of turnbuckles or dead-eyes and lashings.

Q. Can you show me on the photograph, which I have had identified as 3, any chain-plates?

(Testimony of Frank Walker.)

A. These are the chain-plates here, spanker chain-plates.

Q. Mark that with the letter "C."

(Witness does so.)

Q. What are they bolted to, the planks of the vessel? A. Bolted over the plank of the vessel.

Q. How far do they extend down on the side of the planking? A. Oh, seven or eight feet.

Q. And there are sets of chain-plates for each mast, on each side of the vessel? A. Yes, sir.

Q. Or eight sets of chain-plates altogether?

A. In this case eight, yes.

Q. Now, in your specifications marked exhibit "I," you state, "It being the intention of the following specifications to briefly describe the spars, running and standing rigging, iron work, sails, etc." What do you mean by the rigging of the vessel?

A. Exactly what the word implies, the rigging.

Q. That is standing and running rigging?

A. I think it says that. That is what it means.

Q. Describe it in ordinary language so that a layman can understand. Do you mean the wires?

A. There are the back stays and the fore and aft stays.

Q. Are these all?

A. No. Jumbo stays, spring stays—

Q. Are these the wires that run from the side of the vessel to the mast to hold it in place? [180]

A. They are to stay the mast in position, some of them, and others to carry the sails on.

Q. But they are the ropes and wires?

(Testimony of Frank Walker.)

A. Jib-stays, jib topsail stays, ropes.

Q. Ropes and wires from the mast to—

A. And also to take the strain; also when the vessel has sail on her.

Q. Will you point out on identification 2 the fore-castle-head rail, and draw a line from it to the margin? A. (Witness indicates with figure 3.)

Q. Will you also identify the iron chock on the fore-castle-head to which you refer?

A. The chock that was broken?

Q. Yes.

A. (Marked 4.) That is what is left of it.

Q. Can you show me on identification 3 the moulding in the way of the chain-plates?

A. (Marks it M.)

Q. Show me on identification 2 the jubsheet cleat.

A. There is a mast in the way.

Q. Where is that located?

A. I will show the one on the opposite side. (Marks it 5.)

Q. Where were the glass deck lights in the fore-castle-deck?

A. There are too many fittings in the way. Here is one of them.

Q. Just show us one. A. (Marks it 6.)

Q. Where is that located, in the deck itself?

A. Yes, laid into the deck.

Q. Can you show me the galley scuttle? [181]

A. Yes, sir. (Marks it 7.)

Q. What do you mean by the quick work on the fore-castle-head?

(Testimony of Frank Walker.)

A. That is the quick work. (Marks it 8.)

Q. Show me the quick work on the poop, referring to exhibit 3.

A. That is not the quick work referred to. It is the wrong side of the ship.

Q. I understand.

A. That is the quick work. (Marks it Q.)

Q. The quick work you refer to in specifications on the port side of the poop, can you show that on the photograph that has been marked 4 for identification? A. This is the quick work, Q.

Q. What does the quick work on the poop form, the outside of the cabin?

A. That is built up from the waterway up.

Q. The waterway is where located?

A. On identification 2 it is marked 9.

Q. What are the waterways?

A. The waterways are heavy timbers running fore and aft on the vessel on each side.

Q. Whereabouts?

A. On each side of the vessel, and on each side of the stanchions. The stanchion butts through them.

Q. Where is it with respect to the deck of the vessel?

A. It is the raised portion of the deck. They are laid down right on to the beams of the vessel; generally extend up about eight or ten inches higher than the deck.

Q. And the deck is laid on the beams alongside?

A. The quick work and covering boards are laid in there and [182] then the deck is laid up to the

(Testimony of Frank Walker.)

waterways. The waterways run fore and aft of the ship.

Q. What do you call the covering board of the forecastle-head?

A. Board that runs across over the forecastle-head and covers the end of the deck planking. I have marked it 10.

Q. Where are the bulkheads and doors to the galley to which you refer in your specifications?

A. They are inside.

Q. Under the forecastle-head? A. Yes, sir.

Q. What are the bulkheads made fast to?

A. They are built bulkheads right from the deck. There is a sill laid down, then studs put in and run along the beams and bulkheads are built up to it.

Q. Then the bulkhead runs from the main deck of the vessel up to the forecastle-head deck?

A. Wherever there is one built. In this case they run from the main deck to the forecastle-head deck.

Q. What do you mean by wedges and coats to the bowsprit?

A. The bowsprit is wedged in the same manner as the mast, or similar manner to the mast.

Q. Through what deck?

A. Where it passes from the bow of the vessel it is wedged tight and then there is a canvas coat around it to keep the water from running in or entering when diving into the seas.

Q. Is it made fast to the deck?

A. It is made fast to the superstructure planking.

Q. Whereabouts are the coamings to the scuttle

(Testimony of Frank Walker.)

and hatches; what are they fastened to? [183]

A. What deck?

Q. The fore-castle-head deck.

A. There is the regular ladder in this and then the coaming set on the ladder.

Q. Mark it.

A. There is another one forward of the mast.
(Marked 11.)

Q. Where are the wood foundations of the windlass laid? A. Under the fore-castle-head.

Q. What are they laid on, the main deck?

A. On the main deck.

Q. Will you identify the hatches of the vessel?

A. I can only see two of them.

Q. Mark these two, please.

A. The fore-hatch is 12 and the main hatch is 13.

Q. Are the hatch covers laid over the hatches?

A. No. Partly. Some are lying on there.

Q. The planks that are piled on the main hatch?

A. These are the hatch covers.

Q. They go on top of the hatch? A. Yes, sir.

Q. Can you mark the port rail and pin rail and chafing piece? A. Yes, sir.

Q. Mark them as well as you can.

A. (Marks 14.)

Q. Are they shown in photograph that has been marked 5?

A. If they belong to the same ship they are.

Q. It is a photograph of the same ship?

A. The pin-rail I have marked P. Main-rail covering board marked M.

(Testimony of Frank Walker.)

Q. Chafing piece? [184]

A. This is the top piece.

Q. On the top of the main rail?

A. Yes, marked C. H.

Q. In your specifications you provide for six deck planks in the way of the mainmast to be renewed to approved butts? A. Yes.

Q. Show where that planking is.

A. I cannot. I can only show approximately *show* the location.

Q. The mainmast, then. A. (Marked 15.)

Q. Were these planks to extend after from the mainmast toward the main match?

A. It says in the specifications. I forget which way it runs.

Q. It says six deck planks in the *of the* mainmast to be renewed to approved butts. You were going to take out the old planks and put in new deck plank?

A. Going to take out the damaged deck planks and put in some good ones.

Q. You speak of three planks in the way of the mizzenmast to be renewed. Were these three deck planks around the mizzenmast?

A. They butted up to the mizzenmast, yes.

Q. They were either between the main hatch and the mizzenmast or aft of the mizzenmast?

A. I think they ran both ways.

Q. Mark them as near as you can.

A. (Marked 16.)

Q. Through what deck did the spanker-mast run?

(Testimony of Frank Walker.)

A. Went through the main deck. [185]

Q. That is forward of the cabin on the poop?

A. Forward of the poop.

Q. You speak of three planks at the spanker-mast to be renewed from the hatch coaming to beam inside of the poop?

A. They go from the mast to the break of the poop.

Q. They were corresponding deck planks to the others damaged by the breaking of the mast?

A. Yes, sir.

Q. Where were the deck beams that were to be renewed and repaired?

A. Here they are. (Marked 17.)

Q. What do you mean by the wood seatings at the fore, main and mizzen-sheet ringbolts?

A. They were sheetings with half turns over when the ship goes on a different tack, so that they did not go into the deck.

Q. That is they are heavy pieces of wood fastened on to the main deck? A. Fastened on to the deck.

Q. And to them are rings—

A. The ringbolts pass through them and from the deck into the deck beam.

Q. And used for the sheets of the vessel when easing off or hauling in the booms or the sails on the masts? A. Yes.

Q. Where are the nine deck lashing bolts fastened? A. They are along these waterways.

Q. Mark there on identification 2 or identification 5, the location of the ringbolts?

(Testimony of Frank Walker.)

A. (Marked with R. on identification 5.) [186]

Q. Can you show me on identification 5 what you mean by the aft of the bulwark stanchions?

A. That is around here. (Marked F.)

Q. Is that the lower part of the stanchion at the foot of the covering board? A. Yes, sir.

Q. And the covering board is alongside the waterway? A. Yes, sir.

Q. Where are the alleyways along the forecandle-head? A. There, these doors here.

Q. The two doors on each side of the forecandle-head? A. Yes, sir.

Q. Mark one of these, please. A. (Marked 18.)

Q. Through that door there you step on to the main deck of the vessel? A. Yes, sir.

Q. Can you show me on identification 3 what you mean by the overhang of the poop which was to be renewed?

A. No. This rail stands on it. You cannot see it from here. The jury rig sticks over it.

Q. What do you mean by the overhang of the poop?

A. Well, the poop is built to overhang the main deck; there is a walkway across the ship.

Q. What portion was to be renewed then?

A. I forget. You will have to look at the specifications. It is in writing.

Q. The specifications provides for the overhang of the poop to be renewed together with rail and stanchions on the port side and in the center. [187]

A. Yes.

(Testimony of Frank Walker.)

Q. What part of the vessel was to be renewed, the deck of the vessel or the cabin or the overhang of the poop? Describe it so that we will understand.

A. I do not know how to describe it otherwise than it is an extension of the poop. The vessel has a rail around on the forward side of this space where people can walk across or go from one side to the other of the vessel. It is on a level with the poop-deck, that is with the break of the poop.

Q. Where you could walk on it and stand on a level with the main deck or level with the poop?

A. No, this is the poop-deck, and it is between this and the main deck.

Q. The poop-deck is shown in the immediate foreground in the photograph marked identification 2?

A. Yes, sir. That is the poop-deck and main deck.

Q. Mark the poop-deck with a number.

A. (Marked 19.)

Q. You speak of three strakes of quick work on the port side of the poop to be renewed. You have already marked that on identification 4?

A. Yes, sir.

Q. Marked it Q?

A. Yes. There is only two of them marked.

Q. What do you mean by covering board?

A. There is no covering board, but you can see where it used to be.

Q. Mark it with the letter C where the covering boards go on identification 4. (Witness does so.) Where is the [188] Buffalo rail?

(Testimony of Frank Walker.)

A. Here is the buffalo rail.

Q. Mark it. A. (Marked with B.)

Q. What do you mean by buffalo rail?

A. Well, it is chock or rail that runs around on top of the covering board along the poop and fore-castle-head.

Q. Would it be a rail that was laid on top of the board you marked C on identification 4?

A. Not there, there is no buffalo rail there. It is on this side.

Q. It is laid on the board marked by the lower C?

A. Yes.

Q. On identification 4? A. Yes.

Q. So there are two planks to be renewed in the poop-deck on the port side. Will you show me where these planks were on identification 4?

A. Yes, alongside there.

Q. Mark that with D. A. (Does so.)

Q. What do you mean by companionways, skylights, binnacles and wheel-booxes to be overhauled and renewed on the poop?

A. They were splintered by the seas.

Q. What is the companionway?

A. You haven't anything to show here.

Q. What is it?

A. The companionway is the entrance way down into the cabin from the poop-deck, at the break of the poop; there is two.

Q. The break of the poop is the forward end of the poop? [189]

A. There is a forward and aft companionway.

(Testimony of Frank Walker.)

Q. The break of the poop is at the forward end of the poop? A. Yes, sir.

Q. Where were the skylights?

A. Over the cabin.

Q. And they were on top of the poop-deck?

A. Yes, sir.

Q. How high above the poop-deck did they extend?

A. About a foot.

Q. Where was the binnacle?

A. Forward side, just forward of the wheel.

Q. Did that stand on a standpipe by itself?

A. A stand by itself.

Q. Now, will you point out on identification 2 the four seams on each side of the waterways which you recommended to be caulked. A. This is it here.

Q. Draw a line across and mark it.

A. I will mark it on both sides, 21 and 22.

Q. These were seams in the main deck, were they?

A. Yes, sir.

Q. Will you mark the seam on each side of the hatches which you recommended to be caulked.

A. (Marked 23 and 24.)

Q. The specifications say that four seams along the waterways on each side to be caulked full length of the vessel carrying same right under forecastle-head? A. Yes, sir.

Q. That means the full length of the main deck along the [190] superstructure?

A. That meant from the break of the poop right under the superstructure of the forecastle-head right into the eyes of her.

(Testimony of Frank Walker.)

Q. And decks to be caulked around hatches together with one seam on each side of the same for the full length of the vessel?

A. Yes, sir. I have marked these seams.

Q. What do you mean by caulking around the hatches between the—

A. All around the coaming, the hood ends of the plank and alongside.

Q. Mark the hatch coaming for identification on the main hatch. A. (Marked 25.)

Q. And the seams that you recommended was the seam around the hatch coaming and between the deck plank? A. The seams that I agreed upon.

Q. These are the seams in your specifications that you refer to?

A. Yes, I recommended that the whole deck be caulked.

Q. In your specifications you say that alleyways under fore-castle-head be caulked on each side. You mean the main deck in the alleyways? A. Yes, sir.

Q. You say 500 feet of caulking on the poop to be done. That is on the deck marked 19?

A. Yes, sir, number 19.

Q. The alleyways you have already identified as 18? A. Yes, sir. [191]

Q. What do you mean by deck erections?

A. I mean the fore-castle-head and the poop, anything that is erected over the deck.

Q. You say: Decks, deck erections and fittings fore and aft to be given one good coat of oil paint.

(Testimony of Frank Walker.)

A. That means all around interior bulwarks and deck erections.

Q. That was the main deck, poop-deck, fore-castle-head deck were to be painted?

A. That means the erections above the decks, the decks were to be painted and deck erections and inside the bulwarks.

Q. You say that mouldings and chafing pieces in way of chain-plates and fore and aft on both sides to be smoothed off, repaired and renewed as may be found necessary to make same good as before, and seams in way of chain-plates to be well caulked?

A. Yes, sir.

Q. Show me on identification 3 what you mean by the seams in the way of chain-plates.

A. These chain-plates pass over the seams of the plank which run fore and aft. I meant underneath that, before the chain-plates are put in *in* place. They should be exceptionally well caulked in that sense.

Q. These seams in the planks on the outside of the vessel underneath the chain-plates?

A. Yes, exactly.

Q. The chain-plates you have marked M on identification 3? A. No, C is the chain-plate. [192]

Q. You also say all chafed and bruised spots in planking around the hull from the water-line to rail fore and aft on both sides, to be dressed off smooth and graving pieces to be fitted where necessary?

A. Yes, sir.

Q. Would that require them to go over the outside

(Testimony of Frank Walker.)

planking of the vessel and smooth it off?

A. Meant to go over the spots chafed where the rigging had gone over the side of the ship and had injured the outside plank of the ship.

Q. What do you mean by graving pieces to be fitted in?

A. Some places in smoothing off they would take out a piece; a graving piece is a small piece let into the plank to bring it up smooth and flush.

Q. What do you call the garboard strake?

A. A strake commencing at the keel. It is the biggest strake plank. Generally a ship has two strakes, upper and lower garboard. They are heavier than the main planking.

Q. It is that planking on the outside of the vessel which lies next to the keel on the bottom of the vessel? A. Yes, right alongside of the keel.

Q. You recommend that that be trimmed off where chafed. What was the chafing?

A. The largest plank was chafed off.

Q. Was that due to some previous stranding or striking some object?

A. I think that was attributable to some previous stranding. I cannot say for certain.

Q. In your judgment it was not caused by any trouble that [193] she got into after she left Astoria?

A. I think my survey report says there what it is attributable to.

Q. Whether it does or does not, it is *not* attributable to this accident?

(Testimony of Frank Walker.)

A. I am not prepared to say when it was done, whether she went over her own wreckage or what.

Q. Or when it was done? A. No.

Q. What do you mean by after length of shoe to keel to be removed?

A. The keel of the vessel has a shoe of about four inches in thickness, a chafing shoe or protection shoe. The keel is coppered on the bottom, and the shoe stuck on over that again.

Q. This is a piece of plank?

A. Full width of the keel, running the full width of the keel.

Q. To take care of any shock that might come to the keel? A. It is a protection.

Q. It is from the aft end of the keel forward?

A. Well, we thought it was the aft length running from the rudder post. I cannot see it on this.

Q. Running from the rudder post forward on the bottom of the keel, the full length of the plank?

A. Yes.

Q. How long would that be?

A. I think it is ten or eleven feet.

Q. What do you mean by cement in the seams?

A. The seams of vessels are caulked up to the load [194] water-line; they are cemented with Portland cement, all wooden ships.

Q. These are the seams between the outside planking?

A. The seams of the outside planking. These spaces in the oakum, forced into the seams, these spaces are cemented to keep the teredo and other in-

(Testimony of Frank Walker.)

sects from getting into the plank, for protection.

Q. When you recommend seams all over ship's bottom where started be removed and replaced by new, that would be put in from the outside of the vessel?

A. From the outside of the vessel.

(Hearing adjourned until July 31, 1913, at 9:30 A. M.) [195]

Seattle, July 31, 1913.

Present: Mr. CLISE and Mr. BOGLE, for the Plaintiff.

Mr. CAMPBELL, for the Defendant.

FRANK WALKER, on the stand for further cross-examination:

Q. (Mr. CAMPBELL.) What do you mean, Mr. Walker, by paying seams?

A. In deck calking we always refer to paying them with putty, and in puttying the seams they are payed. It is the act of putting in the putty.

Q. And paying seams is to put in something, either putty— A. Putty or pitch.

Q. Over the oakum that is in the seams?

A. Yes, we do not refer to it as puttying, but when it is puttied it is payed.

Q. What was the cause of the chafed and bruised spots on the outside planking from the water-line to the rail which you recommend to be smoothed off and graving pieces put into it?

A. Caused by wreckage.

Q. The deckload going overboard and the masts?

A. The deckload of lumber, floating alongside and broken spars and rigging.

(Testimony of Frank Walker.)

Q. Did that wreckage chafe and cut the outside plank of the vessel? A. Yes.

Q. That extended all the way from the rail to the water-line?

A. Various spots. It was not entirely covered with it. [196] There were spots here and there.

Q. But spots scattered all over the entire side of the vessel from the rail to the water-line?

A. Yes.

Q. What is the difference between the ship's bottom and her top sides?

A. We generally refer to the bottom of the ship from the light water-line down.

Q. From the light load line down? A. Yes.

Q. And the top sides from the—

A. From the load water-line up.

Q. That portion is always exposed?

A. Yes, sir.

Q. What do you call the space on the outside planking between the light load line and the deep load line? A. Boot top.

Q. What do you mean by the butts of the planking? A. Where the two planks butt together.

Q. What do you mean by the hood-ends of the plank?

A. Where the ends of the plank fore and aft of the vessel lay in the rebate of the sternpost or the stem.

Q. And the hood-end seams are the seams between the ends of the plank and the stem of the vessel and the ends of the plank and the sternpost? A. Yes.

(Testimony of Frank Walker.)

Q. Was there any other dock between St. Johns drydock and Astoria at which this vessel could have been drydocked? A. Not to my knowledge.

Q. Did you in your specifications for repairs make any [197] recommendation for repair of the steering gear of the vessel?

A. I do not recollect. The specifications will show.

Q. Will you examine them and see?

A. I will have to read them through and see.

Q. You have segregated the specifications into different portions, haven't you, for the repair?

A. Yes. I do not think there was any damage to the steering-gear outside of the wheel-box.

Q. Simply the box itself?

A. The wheel-box as far as I can recollect.

Q. As far as you know the wheel and steering-gear was in condition where it could be used?

A. Oh, yes.

Q. Now, if when this vessel was towed from Astoria to Portland her steering-gear was in condition where it could be used, and she had no water in her, so that her draft was less than it would have been if fully loaded with lumber, wherein was there any greater peril to the towage of that vessel from Astoria to Portland than the ordinary towage on the river?

A. Under these conditions it would be the general risk.

Q. That is incident to every towage?

A. That is incident to every towage. A great

(Testimony of Frank Walker.)

number of vessels go ashore going up and down the river.

Q. It would be the same peril incident to every towage on the river?

A. Providing she had no water in her.

Q. Now they tow the two ways, don't they, on the river: One with the tug ahead and the other with the tug [198] alongside?

A. I have seen them towing both ways.

Q. You did not hesitate to recommend that she be towed from Astoria to Portland for docking?

A. I did not hesitate because that was the only feasible place to take her.

Q. Referring to Exhibit "K," being the Hall Brothers estimate of certain repairs called for by your supplementary report, I will ask you whether or not the first item that provides "caulking of main deck and waterways including space underneath forecastle-deck but not abaft of bulkhead, forward end of cabin on face and sides of bulwark stanchions; pitch all seams and butts. Our price to be one thousand dollars." I will ask you whether or not the caulking therein provided for was not in part a duplication of the caulking that you recommended to be done in your original specifications?

A. A very small portion of it.

Q. It was in part a duplication?

A. In a very small part only.

Q. Now, in what part was it a duplication?

A. The seams along the waterways and around the hatches.

(Testimony of Frank Walker.)

Q. How many seams along the waterways was it a duplication?

A. The survey report says how many seams.

Q. Please answer the question. Cannot you recollect?

A. I think there were four seams on the waterways and one by the hatches. "The foot of bulwark stanchions to be caulked and decks to be caulked around hatches together with one seam on each side of same for full length of [199] vessel. Four seams along waterways on each side to be caulked full length of vessel, carrying same right under fore-castle-head."

Q. Do you know the length of these ten seams that you call for in the original specifications?

A. No, I do not.

Q. Referring to the original specifications again, there in the same place you provide alleyways under fore-castle-head to be caulked on each side.

A. Yes.

Q. Was not that a duplication also?

A. That was a part of it. That is for caulking six or seven seams in each alleyway.

Q. Do you know the lineal length of these seams?

A. No, I do not.

Q. Who wrote the marginal pencil notations on this letter of Hall Brothers, that are partially erased?

A. I do not know. Let me look at it. (Examines paper.) I do not know, it is not my writing.

Mr. CLISE.—They are supposed to be erased so

(Testimony of Frank Walker.)

they cannot be read. If they can be read we desire to have them obliterated altogether.

Mr. CAMPBELL.—You do not object to my inquiring about them, do you?

Mr. CLISE.—Do you think you can read them?

Mr. CAMPBELL.—I think I can. I think it says “specific loss only.” I want to know what it means.

Q. What does that first notation mean when it says “Specific loss only”?

A. I haven't the faintest idea. [200]

Q. What did it mean when they put opposite item 2 the ditto mark “Specific loss only”?

A. I could not tell you. I had nothing to do with the marks. It must be some private memorandum of the person that made them.

Q. What does the notation mean opposite item 3 where it says “declined”?

A. I know nothing about it.

Q. What was meant by the notation opposite item 4 which says “This is correct”?

A. I do not know anything about it.

Q. What did it mean by the notation opposite item 5 marked “declined”?

A. I know nothing about it.

Q. Now, you said that there was a mistake made by Hall Brothers in respect to item number 6 with reference to the \$755 for the removal of the wash strake and caulking backs of all bulwarks, stanchions for full length of the vessel. A. Yes, sir.

Q. Now, that mistake was in that it was not your intention to ask them to give you a bid for removing

(Testimony of Frank Walker.)

the entire wash strake, but simply the wash strake from the break of the poop to the break of the fore-castlehead? A. That was my intention, yes, sir.

Q. Did they give you a bid for the corrected specifications? A. Never gave me a bid at all.

Q. Do you know of their having given any bid?

A. I have no idea.

Q. Did the company? [201]

A. I have never seen any such bid.

Q. Then these notations that were made on the margin in pencil opposite item six were correct, was it not?

A. I do not know. I do not know anything about the marginal notes.

Q. Let me read it to you: "Only as from B. of P. and B. of F. H." Would you say that only meant from break of poop to break of fore-castle-head? A. I do not know. I never saw that.

Q. Don't you usually abbreviate "F. H." for fore-castle-head? A. No, I never did.

Q. What would you use? A. Write it out.

Q. Always write it out? A. Yes, sir.

Q. Will you take your supplementary report, Mr. Walker. Where is the original of that report?

A. I do not know. It was handed to the owners of the ship when I wrote it.

Q. Mr. Thorndyke? A. Yes, sir.

Q. Did you deliver this one to him in the last two or three days, this copy? A. No, sir.

Q. A specific number of items—"The following additional items of repair I also consider necessary

(Testimony of Frank Walker.)

to make ship seaworthy": "Make new foreyard to take place of the yard now in place, which is sprung, using old iron work and send yard up complete." "Fit hardwood battens over chafed spot in foremast, occasioned by chafing of jam of gaff." [202] Now, that chafing or jamming of gaff was not due to the trouble this vessel got into after leaving Astoria, was it?

A. I could not say. It may have been partly.

Q. Can you say with certainty that it was due to that or was it due to previous wear of the vessel?

A. Due to the working of the gaff on the mast. When the gaff was working on the mast at that time it might have caused part of it.

Q. You were not present to know that that is the fact? A. No, sir.

Q. Then your statement was correct when you said that part of this supplementary report was a duplication of the work provided in the original report?

A. The report speaks for itself.

Q. Just answer the question.

A. I made a slight error in it.

Q. That is what I want. And the same thing is true with regard to the foreyard?

A. The foreyard was not damaged at that time. The foreyard was an old damage.

Q. So that is a repair not caused by the trouble the vessel got into?

A. We never claimed that it was.

Q. That is why you separated the preceding items from the latter items by the qualification "The fol-

(Testimony of Frank Walker.)

lowing additional items of repair I also consider necessary," etc.?

A. They were minor items there.

Q. If this vessel had been repaired at the time the specifications were drawn up, she would have been repaired under [203] the supervision of the owners' representative would she not?

A. Yes, sir.

Q. That is customary in the making of repairs on vessels, is it not? A. It is.

Q. It was contemplated at the time bids were called for, that the vessel would be repaired at the Port of Portland's Drydock, so far as the docking of the vessel was necessary, was it not?

A. I do not know anything about arrangements of that kind.

Q. Did not you draw this note to the bidders which so provided, which was sent out with the specifications, marked exhibit "1"?

A. No, I had nothing to do with that.

Q. Outside of the machine-shop work that would be necessary on the iron work on the vessel, and the legs or derrick necessary to ship the new masts going into the vessel, could not most of the work of repairs, for the wood repairs, be done aboard the vessel itself, or at the dock alongside of the vessel?

A. Yes. Except the rigging and that is done in a loft.

Q. The wire rigging?

A. Yes, and they have to have certain facilities for handling the wire.

(Testimony of Frank Walker.)

Q. And for making the sails? A. Yes, sir.

Q. The other work could be done by a competent ship's carpenter with the usual tools used by ship's carpenters?

A. The woodwork could be done, yes. [204]

Mr. CAMPBELL.—I offer in evidence identifications 2, 3, 4 and 5.

Mr. CLISE.—I would like to know the date they were taken.

Mr. CAMPBELL.—They were taken May 6th, 1912

Mr. CLISE.—No objection.

Photographs marked Defendant's Exhibits "2," "3," "4," and "5," filed and returned herewith.

Q. Did you keep, Mr. Walker, a copy of the memorandum that was entered into between yourself and Captain Gibbs on March 27th?

A. I haven't one with me. I think I have in my office.

Q. I show you a paper that has been marked "5a" for identification. I would like to ask you if the "renewal of mast steps" which in this agreement you and Captain Gibbs stated you considered unnecessary, were provided for in the original specifications?

Mr. CLISE.—I wish to object upon the ground that it is not proper cross-examination, and is taking up matters that the witness was not examined concerning in chief.

Mr. CAMPBELL.—All right.

(Testimony of Frank Walker.)

Redirect Examination.

Q. (Mr. BOGLE.) Mr. Walker, you were asked on cross-examination concerning the navigation of the Columbia River from Astoria to St. Johns. Does the river have channels that are navigable and bars or shallow points along the river that are not navigable?

A. Well, there are shallow points along the river in many places that are dangerous to navigation.

Q. And a vessel navigating up the river would have to keep [205] fairly within the channels of the river, deep channels of the river?

A. If the channel is properly followed there is not much danger.

Q. At the time this vessel was lying at Astoria, when you saw her in October, 1911, you say that she was full of water, or what was her condition?

A. She had same water in her. I do not know whether she was full. I do not think she was full at the time; she was not making water then.

Q. What was her condition with respect to being safely towed through the narrow channels of the river?

A. Well, with water in a ship she would steer badly.

Q. Would there be danger of her grounding on the bars of the river?

A. There would be, yes, sir.

Q. Your attention has been called by Mr. Campbell to the partial duplication in the supplemental report of survey of these repairs recommended in

(Testimony of Frank Walker.)

the original survey. Referring to that particular item wherein there is a duplication, what is the percentage of the duplication?

Mr. CAMPBELL.—I object, unless the question is made more specific. There are several items duplicated.

Q. Which was the first item of your supplemental report where you said there was a partial duplication of the original report?

A. The first item is caulking entire hull.

Mr. CAMPBELL.—That is subject to agreement later on.

Mr. BOGLE.—I will change the question.

Q. You have stated in your cross-examination that the item [206] in your supplemental report of survey, reading “Caulk entire main deck, including waterways and all under forecastle-head,” was a partial duplication of the recommendation of your original report. Can you express in the way of a percentage the extent of that duplication?

A. I should estimate it roughly to be four or five per cent. Not exceeding five per cent.

Q. You were asked also in regard to the item in your supplemental report reading “Fit hardwood battens over chafed spot in foremast, occasioned by chafing of jam of gaff.” You stated that this chafing was done partly before this accident and partly at the time of the accident. Was it in such a condition at the time you made this survey that it was necessary to be repaired in order to make the ship sound and safe for navigation?

(Testimony of Frank Walker.)

A. Yes, sir.

Q. Do you know personally the extent to which this particular damage had gone before the voyage begun?

A. No, sir; only by report of the master.

Q. What was his report?

A. Why, as near as I remember—

Mr. CAMPBELL.—I object as hearsay.

A. (Continuing.) The master reported to me that it had been very much increased during the time the gaff was working backwards at and after the disaster.

Q. Was the damage such that it would likely be caused by that rolling and chafing at the time of the disaster?

A. Any rolling and chafing, Judge. [207]

Q. (Mr. CAMPBELL.) Mr. Walker, when you first saw the “Nottingham” at Astoria, was the gaff in a position where it would chafe the mast?

A. I do not remember. I think the gaff was lowered down at that time.

Q. You do not know but what that gaff was lowered down when the trouble came?

A. I knew that sail had been very much used in trying to handle the ship after the disaster.

Q. From what the master told you?

A. And the jury rig that I saw at the time.

Q. Where was the jury rig at the time?

A. The jury rig was aft where she was trying to balance the vessel.

Q. The jury rig was not on on this occasion, was

(Testimony of Frank Walker.)

it? A. No, sir.

Q. Wherein would the wear and tear of the gaff on the mast be any different at that time than when the vessel was sailing in a similar gale of wind?

A. At this time the vessel was a total wreck, and she was left to the mercy of the winds at the time and the gaff was swinging forwards and backwards wildly.

Q. You do not know that?

A. Only by report.

Q. Hearsay,

A. The master claimed that all of the chafing was done at that time.

Q. Would that wear and tear on the mast be any greater than what the schooner would suffer with her sails set and rolling in a calm or when the wind was light? [208]

A. I could not say it would be any greater.

Q. How high was the place on the mast where the gaff fitted around it, from the deck?

A. Where the gaff chafed, the chafed spot?

Q. Yes. A. Under the hounds.

Q. I ask the distance, the height I ask you.

A. The mast is 112 feet long.

Q. I want your judgment.

A. I am trying to give it. About 40 feet from the deck.

Q. Was there any reason why the water could not have been pumped out of the "Nottingham" as she lay at Astoria?

A. The only reason was, there was nobody at-

(Testimony of Frank Walker.)

tempted to do it.

Q. Do you know whether any request was made by the Globe Navigation Company to the Port of Portland for permission to pump the water out of her?

A. I do not know anything about it.

Q. I will hand you a photograph and ask you if that shows the condition of the schooner's deck-load at the time that you first saw her?

A. A similar condition to that, yes.

Mr. CAMPBELL.—Have you any objection to that, Mr. Clise? It was taken at the time.

Mr. CLISE.—I understand it was taken while she was at Astoria?

Mr. CAMPBELL.—Yes, sir. I offer it in evidence.

Photograph marked Defendant's Exhibit "6," filed and returned herewith.

Q. I show you three other photographs and ask you whether they show the "Nottingham" as she was when you saw her at Astoria? [209]

A. This one is, as I remember her.

Q. How about the other two?

A. I did not see her under these conditions.

Mr. CAMPBELL.—I offer the one identified by the witness in evidence.

Mr. CLISE.—No objection.

Photograph marked Defendant's Exhibit "7," filed and returned herewith.

Q. (Mr. BOGLE.) Mr. Walker, who was in charge and possession of the "Nottingham" at the time you saw her at Astoria?

(Testimony of Frank Walker.)

A. There was a watchman on board. I was given to understand he represented the Port of Portland.

Q. Do you know whether the vessel had been seized under a libel at that time?

A. I think she had.

Mr. CAMPBELL.—We will admit that.

Q. And was in possession of either a Government official under the libel or of the salvors at that time?

A. That is the way I understood it, yes.

Q. Did you have to get permission from someone to get aboard?

A. Mr. Thorndyke obtained that permission.

Q. Who from?

A. I do not know. I think from the Port of Portland or their attorney.

Q. You were asked whether the owners made any request for permission to pump her out. You say you know nothing about it. Do you know whether the underwriters made any attempt to pump her out?

A. I do not think they did. I do not think anybody did.

Witness excused. [210]

**[Testimony of George F. Thorndyke, for Plaintiff—
Cross-examination.]**

Mr. GEORGE F. THORNDYKE, on the stand for further cross-examination:

Q. (Mr. CAMPBELL). Have you the information called for yesterday?

A. The "Nottingham" was salted in May, 1908,

(Testimony of George Thorndyke.)

before this accident. She was docked in April, 1911. She was caulked in April, 1907.

Q. What part of her was caulked in April, 1907?

A. I think her hull was all caulked. It was done in East Boston.

Q. From the bulwarks down?

A. The whole hull.

Q. When were her decks last caulked?

A. You did not ask me that yesterday. I could not say. I did not look it up.

Q. Kindly look that up so as you can supply it.

A. She was caulked after a collision with an iceberg off Cape Horn, thoroughly, and repaired at East Boston and thoroughly repaired.

Q. Probably her decks were recaulked at the same time her bottom was recaulked. A. Very likely.

Q. Of course her bottom was repainted at the time she was caulked? A. Oh, yes.

Q. She was last painted when she was last docked.

A. She was painted in April, 1911.

Q. Did you get any bids on the supplementary report of Walker, other than from Hall Brothers?

A. I do not know. I think I talked with Walker and Captain [211] Gibbs about that. And I think Gibbs stated that he thought Hubbard would give a fair estimate and that would be all that was necessary.

Q. Did you ever furnish a copy of that supplemental report to the Firemen's Fund Insurance Company?

A. I have no recollection of having done so.

(Testimony of George Thorndyke.)

Q. You refused to do so?

A. I do not remember of having refused to do so.

Q. Wait a minute. I will see if I can refresh your memory. Do you recollect in June, 1913, a request being made to you by the Firemen's Fund Insurance Company, through the firm of Johnson & Higgins, whom you had appointed to make up the general average adjustment on the "Nottingham," a request for a copy of this supplemental report?

A. I do not remember it. I do not deny it.

Q. Do you not remember writing them a letter refusing to furnish the Fireman's Fund Insurance Company a copy of that report?

Mr. BOGLE.—If there is such a letter in existence it ought to be produced.

A. I do not remember it at this time.

Q. Did not you write them as follows: "As the survey of March 27th referred to by you is signed jointly by Mr. Walker and Captain Gibbs, the San Francisco Board probably have a copy which would be available for examination; but the survey of the 4th of March is signed only by owners, Surveyor, Mr. Walker, and as charges in adjustment are not based upon that survey, we see no reason why the Firemen's Fund should require it, and for that reason we will not submit the report of survey of March 4th to them." [212]

A. If it is that letter—

Q. Don't your recollection go back until about the 14th of June so as to recollect whether or not you wrote that letter to Johnson & Higgins?

(Testimony of George Thorndyke.)

A. Of this year?

Q. Yes, sir.

A. I could not positively state that I did write that letter. I remember something coming up in connection with it, and just whether I wrote that letter or not, I do not know. If I wrote it, it speaks for itself.

Q. Who placed the insurance on the "Nottingham" before you were directly insured here by the Firemen's Fund Insurance Company?

A. Various companies that I remember, through Johnson & Higgins, of course.

Q. Through Johnson & Higgins as of course?

A. As I remember it.

Q. Have you any of these policies that were placed at that time? A. I think so.

Q. I wish you would produce them to me. Did you ever make a request of the Port of Portland for permission to pump the water out of the "Nottingham," while she was lying at Astoria, prior to the time of her towage to St. Johns drydock?

A. I think not.

Q. You know in fact she was pumped out, don't you?

A. I do not. I was not present when she was started.

Q. Who made up the general average adjustment on the "Nottingham," in which were embodied the disbursements and [213] losses resulting from this trouble? A. Johnson & Higgins.

(Testimony of George Thorndyke.)

Q. What business is the firm of Johnson & Higgins in?

A. Insurance brokers and marine adjusters.

Q. They are the leading firm of marine adjusters on this coast? A. I think so, undoubtedly.

Q. Thoroughly competent in every particular to make up adjustments, in your judgment?

A. I have always judged them so, given them our business.

Q. You appointed them adjusters in this particular case, didn't you? A. We did.

Redirect Examination.

Q. (Mr. CLISE.) Mr. Thorndyke, you have spoken about the "Nottingham" being recaulked in Boston in the fall of 1907? A. Yes, sir.

Q. When did she return to Seattle?

A. She was recaulked, I think, in the spring of 1907, and she arrived here early in 1908.

Q. After her arrival here did you have any repairs made to her? A. Yes, sir, extensive repairs.

Q. What repairs, for instance?

A. I do not remember all of them, but one thing particularly. She was worn down along the water-line for several strakes of plank on both sides and we removed the planking and replaced it with new.

Q. Was she placed on a drydock? [214]

A. Probably not. She was affected at the load water-line and the repairs could be made while she was in the water without drydocking her; and that planking was all recaulked and recemented and painted at that time.

(Testimony of George Thorndyke.)

Q. Then there was a certain amount of recaulking done then along about May, 1908? A. Yes, sir.

Q. Now, referring to this supplementary report, that is Plaintiff's Exhibit "J," was that ever submitted to any representative of the Firemen's Fund Insurance Company? I will ask the formal question: During the winter and spring of 1912, were any negotiations entered into with the Firemen's Fund, looking to a settlement or adjustment of the dispute occasioned by the disaster to the "Nottingham"? A. Yes, sir, as I remember.

Q. You have testified that you went to San Francisco, and that I went to San Francisco, in an endeavor to adjust these matters?

A. Yes, sir.

Q. Now, then, were there any efforts made with any representative of the Firemen's Fund Insurance Company here in Seattle, in regard to making a settlement and adjustment? A. Yes, sir.

Q. Who?

A. I think we met Mr. Taylor and Mr. Page and Mr. Campbell. You and I met Mr. Page and Mr. Campbell and Mr. Taylor of the Firemen's Fund once in the Colman building in this city about that time.

Q. Now, I will ask whether or not this supplementary report [215] survey, Plaintiff's Exhibit "J," was submitted to any representatives of the Firemen's Fund Insurance Company?

A. It certainly was. Captain Crow was at that meeting, too, if I remember.

(Testimony of George Thorndyke.)

Q. Was it ever submitted to Captain Gibbs?

A. I do not know. I do not remember.

Q. (Mr. CAMPBELL.) Did you ever submit it to Captain Gibbs? A. I do not remember.

Q. (Mr. CLISE.) Now, Mr. Thorndyke, I will ask you whether or not it is not a fact that in the spring of 1912, a conference was held in my office in the New York block, attended by you and Mr. Campbell and Mr. Page and Judge Bogle and myself, in which this very supplementary report was discussed and an endeavor made to arrive at an agreement in regard to various matters and items mentioned in that supplementary report?

A. I think it was during the evening time.

Q. At that time or any subsequent did they say that they would appoint some person here in Seattle to represent them, to confer with Walker, our surveyor, with reference to the various items contained in that supplemental report?

A. I do not remember that they did.

Q. (Mr. BOGLE.) Mr. Thorndyke, did they not appoint Captain Gibbs to confer with Mr. Walker, and did not he go down and examine the ship?

A. Yes, sir.

Q. To see whether he concurred in this supplemental or not?

A. Yes, sir. I was wrong about that.

Q. (Mr. CLISE.) Do you wish to correct the statement that you [216] just made then?

A. I do.

Q. What do you wish to say in regard to it?

(Testimony of George Thorndyke.)

A. I wish to say that Captain Gibbs was appointed as a result of that meeting and went to Portland, accomponied by Mr. Walker and myself, and boarded the "Nottingham."

Q. Was a copy of that supplemental report furnished Captain Gibbs? A. Yes, sir.

Q. For his examination?

A. Yes, undoubtedly. It was signed by him as I remember.

Q. Now, during the time the vessel was at Astoria, did you, representing the owners, exercise any act of ownership whatsoever with regard to that vessel?

A. No.

Q. You have testified you did not have her pumped out at Astoria. The fact that you did not exercise any act of ownership is the reason you did not have her pumped out?

A. I had nothing to do with having her pumped out.

Q. (Mr. CAMPBELL.) The reason you say that this supplemental report was furnished Captain Gibbs, was because his name was signed to it, is that your statement?

A. I think his name is. I will explain, Mr. Campbell. There are two supplemental reports. There are other reports than the first one mentioned made out by Walker, one of these reports has Captain Gibbs' signature.

Q. That is the one you are talking about that was furnished Captain Gibbs, is it not?

Mr. CAMPBELL.—This has not been offered in

(Testimony of George Thorndyke.)

evidence. I [217] now offer it in evidence.

Mr. CLISE.—I object as incompetent, irrelevant and immaterial and not identified, as the signatures have not been proved.

Paper marked Defendant's Exhibit "5a," filed and returned herewith.

Q. (Mr. CAMPBELL.) The supplemental report you are speaking of furnished Captain Gibbs is the one marked exhibit "5a," is it not?

Mr. CLISE.—Examine the report before you answer.

A. I do not think there is any doubt, Mr. Campbell, but what Captain Gibbs had a copy of that report and also the other one.

Q. Will you answer my question. The report you are speaking of having been furnished Captain Gibbs was a copy of the report marked exhibit "5a"?

A. I refer to both of them, as explained to you. There were two supplemental reports.

Q. Why did you state to me a while ago that you had no recollection of the report of March 4th being furnished the Firemen's Fund Insurance Company, and now after examination by your counsel, you change it?

A. Because I had in mind then Mr. Taylor as being Firemen's Fund Insurance representative and not Captain Gibbs.

Q. You want to go on oath at this time that you furnished Captain Gibbs Walker's report of March 4th?

(Testimony of George Thorndyke.)

A. I did not say that. I have no doubt but he had it.

Q. You have no recollection of it, have you?

A. No.

Q. Why do you hesitate? [218]

A. I am trying to think. Give me a chance to think.

Q. I am giving you all the opportunity you want to think.

A. I do not remember personally giving the Firemen's Fund a copy, though I may have done so.

Q. If you did so, why did you refuse through Johnson & Higgins on June 17th or thereabouts, to furnish us a copy of it?

Mr. BOGLE.—I object, because the witness has not said that he refused to give them a copy of it.

Mr. CAMPBELL.—We will produce the original letter unless it has been lost; if it has, we will prove the copy of it.

Q. Before you wrote this letter in June you conferred with your counsel, and it was on his instructions that you refused?

Mr. BOGLE.—He has not said that he wrote such a letter in June or any other time.

Q. You cannot recollect that either?

A. I think I consulted counsel on that.

Q. Now, you do remember having written that letter to Johnson & Higgins, don't you?

A. I said in my former testimony that I had a recollection of something coming up where there was some document sent up here for. Whether that

(Testimony of George Thorndyke.)

is the one or not I could not say.

Q. Have you the letter Johnson & Higgins wrote you? A. I suppose I have.

Q. Produce it, please. Now, you do not mean to say that Captain Gibbs was appointed an arbitrator of the differences between the Firemen's Fund and your company, in our conference about the 1st of May, 1912, do you?

A. Well, my feeling was that he was appointed arbitrator of [219] the differences between Captain Crow and Walker.

Q. An arbitrator?

A. Well, harmonize, or whatever you call it.

Q. As a matter of fact you and Mr. Clise, I believe, I do not know whether he did or not, and Mr. Walker, went to Portland with Mr. Page and Captain Gibbs to meet Captain Crow and there went aboard the vessel and attempted to agree upon the differences that were set forth in the agreement between Walker & Gibbs, didn't you, shown in exhibit "5a"?

A. There were certain points of dispute between Captain Crow and Walker, as I recollect it. Captain Gibbs went down there to examine the vessel and harmonize and agree with Walker on these matters.

Q. Was he to have the deciding voice?

A. I do not know that he has in any matters.

Q. Did he in this arrangement, did he have the deciding voice?

A. Only as far as the custom. I think you would

(Testimony of George Thorndyke.)

follow the advice of your surveyor. I would take it so.

Q. Captain Crow and Captain Gibbs could not agree with Mr. Walker on that occasion, could they?

A. I think there were some disputes even then.

Q. These disputes centered largely around the depreciation of the hull by exposure to weather, above the water line, didn't they?

A. I do not remember now, Mr. Campbell. I have gone through a vast amount of matters since then.

Q. Was not that in dispute?

A. I would not say that. [220]

Q. Was there not a dispute also as to the effect on the deck by the weather? Were not these two points in dispute?

A. That may be the fact. Surveyors usually disagree and afterwards agree. I do not remember.

Q. Now, will you read the second page of the agreement of March 27th, and see if these were not the items, if it was not with respect to that disagreement between Gibbs and Walker, that you all went to Portland?

A. I could not say now that that was one of the points of dispute between Walker and Captain Crow.

Q. You have no recollection of that supplemental survey report of March 4th being before Mr. Clise, Mr. Page and myself and Judge Bogle and yourself, in Mr. Clise's office on that evening that we were in Mr. Clise's office, have you?

A. I do not remember, but the principal survey,

(Testimony of George Thorndyke.)

I do not even remember whether that was there or not.

Q. Did you ever furnish the Firemen's Fund Insurance Company a copy of the bid you obtained from the Hall Brothers marked Plaintiff's Exhibit "K"? A. I do not remember now.

Q. (Mr. BOGLE.) Mr. Thorndyke, you stated that you consulted with Captain Gibbs *with* respect-
ing asking Hall Brothers for bids on that supple-
mental report of Mr. Walker, and that he stated that
it would be sufficient to get their bid. Is that cor-
rect? A. That is as I recollect it.

Q. And was he at that time familiar with the re-
port of Mr. Walker, upon which these bids were
being invited? [221]

A. He must have been.

Mr. CAMPBELL.—I move to strike the answer as
not responsive to the question.

Q. Mr. Thorndyke, referring to this conference
that you have mentioned, in Mr. Clise's office, at
which Mr. Campbell and Mr. Page were present on
behalf of the Firemen's Fund, and you and Mr. Clise
and myself on the other side, was not one of the
points about which we were trying to get together,
the question of the necessity of the repairs called for
in Walker's supplemental report, and was it not
understood at that meeting at that time, that Mr.
Page and Mr. Campbell would get Captain Gibbs,
representative of the Firemen's Fund, and go down
to Portland and examine this ship, and see whether
he would approve the representation of Walker's

(Testimony of George F. Thorndyke.)

supplemental report? Was not that why he did go down and make that examination?

Mr. CAMPBELL.—I object as leading.

A. Yes, sir.

Q. (Mr. CAMPBELL.) Why do you answer that question “Yes” after Judge Bogle propounds it in a leading form, when you could not answer it a moment before?

Mr. BOGLE.—I object as not a proper question. It is argumentative; there is nothing to show that he could not answer it.

A. As I said to you before, Mr. Campbell, I had a mass of matters in connection with the “Nottingham,” and there are some things that escape my memory until my mind is refreshed, until some instance is cited. And I had [222] forgotten, as I said, that I had met you and Page. It did not come to my mind that I met you and Page in Mr. Clise’s office. I remember it now. I have had recourse to my thinking faculties and remember the circumstances and generally what took place, and I now testify to that effect.

Q. When I propounded that question to you, you knew that that conference had taken place, didn’t you? A. It did not occur to me at that time.

Q. Was not my question directed to that conference and named the parties to it?

A. I do not remember that now whether you did.

Q. Your answer then to Judge Bogle’s leading question is not a fair answer to it, is it?

A. I think so.

(Testimony of George F. Thorndyke.)

Q. Is it not a fact that your recollection is very dim upon the subject?

A. It is getting clearer every minute.

Q. Assisted by counsel.

Mr. BOGLE.—I object, that is not fair to the witness.

Q. Now, do you have at this time, too, a clear recollection of the Walker survey report of March 4th, being before us at that conference?

A. Yes, sir, I have.

Q. Then why in June, 1913, did you refuse to produce a copy of it?

Mr. BOGLE.—There is no evidence that he did refuse to produce a copy of it. I desire the record to show that counsel bases his question on what purports to be a letter that he refuses and does not produce it or [223] furnish it to the witness.

Mr. CAMPBELL.—I will produce the letter on that request and ask that it be copied in the record and the original returned.

Q. Is it not a fact that in that conference what we were discussing was the difference between Gibbs and Walker, which was embodied in the agreement marked exhibit "5a."

A. I do not think so. I do not think we were discussing that.

Q. Don't you think you ever discussed that in substance?

A. I do not remember any conference in which it was ever discussed.

Q. You do not think any part of the matter con-

(Testimony of George F. Thorndyke.)

tained in the Walker-Gibbs agreement was ever discussed at that conference, do you?

A. No, I do not think that was in existence at that time.

Q. So that the discussion at the conference in Mr. Clise's office was on something that was entirely separate and apart and had no reference to exhibit "5a," the agreement between Gibbs and Walker?

A. As I recollect the conference it was—the idea was that Captain Gibbs should go to Portland with Walker and go over the vessel and harmonize the difference between Walker and Captain Crow, and these two gentlemen went down and I think you went and also Mr. Page.

Q. Answer my question. (Question read to witness.)

A. I think it had no reference to that.

Mr. CAMPBELL.—I will on the request of counsel produce the letter to which I have been referring and as embodying Mr. [224] Thorndyke's and the Globe Navigation Company's refusal to produce the survey report. And I now produce the letter and ask it be copied into the record and ask permission to withdraw the original for further use in taking depositions in San Francisco. If counsel desires the original letter in the files of the case we will return it, together with the depositions to be taken in San Francisco.

Mr. BOGLE.—I object to the letter produced and offered in evidence, for the reason that it purports to be a letter from Johnson & Higgins, written by

(Testimony of George F. Thorndyke.)

Mr. Bishop of San Francisco, to the Firemens' Fund Insurance Company, and does not purport to be a letter written by Mr. Thorndyke or the Globe Navigation Company. The statements in that letter as to purported contents of some communication of the Globe Navigation Company is pure hearsay.

Q. Do you know the signature of John A. Bishop?

A. No, I would not testify to it. I have seen it.

Q. How many letters have you ever had from Mr. Bishop?

A. Oh, I might have had three or four.

Q. All the time you have been dealing with Johnson & Higgins and their adjustments, you only had three or four?

A. You asked my recollection. That is all I can say now. A good many letters come from Johnson & Higgins that are not signed by Bishop.

Q. Do you know his signature?

A. Some are signed by—

Q. Do you know Bishop? [225]

A. Very well.

Q. He is an employee of Johnson & Higgins?

A. Yes, sir.

Q. In charge of their adjustment department?

A. I assume he is.

Q. Will you later produce the original letter which you received from Johnson & Higgins requesting a copy of the Walker report of March 4th, together with your office copy of your reply thereto?

A. Yes, I will get a copy of that letter.

(Witness excused.) [226]

**[Testimony of Frank Walker, for Plaintiff—
Cross-examination.]**

FRANK WALKER, on the stand for further cross-examination:

Q. (Mr. CAMPBELL.) I hand you identification “5a,” and ask you if that is your signature to it?

A. Yes, sir, that is my signature.

Q. You joined in that agreement with Captain Gibbs? A. Yes, sir.

Mr. CAMPBELL.—I now offer it in evidence.

Paper marked Defendant’s Exhibit “5a,” filed and returned herewith.

Redirect Examination.

Q. (Mr. BOGLE.) Mr. Walker, this document that you have just identified, purports to be signed by yourself and by Captain Gibbs, on March 27th, 1912. At the time you made the examination embodied in that report, had Captain Gibbs been furnished with a copy of your supplemental survey of March 27th, and been advised of the contents of that survey?

A. Yes, sir, I think I handed Captain Gibbs a copy of my survey, myself.

Q. What called forth this action by yourself and Captain Gibbs?

A. There was a controversy between Captain Crow and myself regarding the items mentioned here.

Q. Are these items mentioned in your supplemental report?

A. Partly. The first page has nothing to do with my supplemental report. The second page has.

(Testimony of Frank Walker.)

Q. Was it or not your understanding at the time you and Gibbs were designated to make this third survey or [227] report, that one of the principal objects in view was to see if Captain Gibbs would agree with your recommendations in your supplemental report?

Mr. CAMPBELL.—I object to that as calling for a conclusion of the witness.

A. The work called for in my supplemental report was part of our conversation and negotiations at this time.

Q. Do you remember whether at the time you and Captain Gibbs were making this survey, or at the time you made the trip down for that purpose, you had a copy of the supplemental survey with you?

A. I cannot say that I did.

Q. (Mr. CAMPBELL.) What you went to Portland for was an attempt to reconcile the difference between yourself and Captain Gibbs and Captain Crow, by an actual inspection of the vessel on the ground, with respect to these matters which are contained in the second page of this Gibbs agreement?

A. No, it was some other items objected to by Captain Crow, after agreeing with me on every item, afterwards he objected *he objected* on the first page of that agreement.

Q. What do you mean by agreeing on every item?

A. When I drew up the first specifications Captain Crow agreed with me that every item in the first specifications were necessary and correct.

Q. That was the agreement at the time?

(Testimony of Frank Walker.)

A. And after bids were called for Captain Crow made objections that are contained on that first page. [228]

Q. And you and Captain Gibbs then got together and agreed in accordance with the terms on the first page? A. The whole of that document.

Q. But in accordance with the terms on the first page? A. We agreed as that document states.

Q. This document, the first item provides that you consider unnecessary the renewal of the mast steps.

A. Yes, sir, just as it states there.

Q. That was covered by the original specifications?

A. Yes, sir.

Q. That provided for the renewal of the mast steps?

A. Yes, sir. Of course, at the time of the first specifications, while they were drawn up they were an unknown quantity.

Q. The lumber was out of her, was it not?

A. The lumber was out of her.

Q. They were so that they could be inspected?

A. They were unknown until the masts were removed.

Q. They could be inspected before the masts were removed? A. No.

Q. Was there any difference in the opportunity to inspect them in December when you drew up the original specifications, than in May when you visited the vessel?

A. The difference was we could not see what the

(Testimony of Frank Walker.)

steps were like until the stumps were removed entirely.

Q. Were they removed when you agreed to this agreement? A. No.

Q. So at the time you agreed to this agreement you had no more information?

A. We had a little more. [229]

Q. You had no more information when you entered into this agreement on March 27th, than you had in December when you drew your original specifications, had you?

A. No more information between those dates.

Q. The original specifications call for painting of the deck, didn't they? A. Yes, sir.

Q. And the original specifications called for two coats of copper paint on the bottom? A. Yes.

Q. And by this supplemental agreement you take out of the original specifications, one foresail, one foregaff-topsail and one forestaysail, which you estimate to be valued at \$475.

A. Just as that states.

Q. And by this original agreement of March 27th, you eliminate three gafftopsails, don't you?

A. Just as it states, I cannot say what it says there now.

Q. You may look at it.

A. I say just as it states there; I agreed to it.

Q. The original specifications provided for seven gafftopsails, didn't they? A. Yes, sir.

Q. The original specifications provided for the renewal of a cast-iron chock and stanchions?

(Testimony of Frank Walker.)

A. Yes, sir.

Q. You took these out of the original specifications by this.

A. That was an item also agreed between us did not belong to the damage of the disaster. There was no question [230] on that item.

(Witness excused.) [231]

Seattle, Washington, August 30, 1913.

Present: Mr. CLISE and Mr. BOGLE, for the Plaintiff.

Mr. CAMPBELL, for the Defendant.

[**Testimony of Capt. A. W. Swenson, for Plaintiff.**]

Capt. A. W. SWENSON, a witness called for on behalf of the plaintiff, being duly sworn, testified as follows:

Q. (Mr. CLISE.) State your business and your age? A. Fifty-four.

Q. What is your occupation?

A. Master mariner.

Q. How long have you been a master mariner?

A. Twenty-six years.

Q. What craft?

A. Sailing vessels and steamers.

Q. In what waters? A. On the Pacific Ocean.

Q. How long were you master of the "William Nottingham" prior to October, 1911?

A. Three years.

Q. To what ports had you made voyages in the "Nottingham"?

A. On the west coast of South America and Australia.

(Testimony of Capt. A. W. Swenson.)

Q. You were in command of the vessel and in charge of the loading of her cargo at Westport, just prior to October, 1911? A. Yes, sir.

Q. What cargo did she have on board, just generally? A. At this time?

Q. Yes.

A. Mixed cargo of lumber and timbers and small stuff. [232] Some big timbers and some small.

Q. Above and below decks?

A. The big part of the timbers was on deck.

Q. I wish you would describe just how the cargo was stowed on deck?

A. Well, it was stowed so as to clear everything. It is pretty hard to describe without a diagram of some kind.

Q. Captain, I will show you a paper called "Globe Navigation, schooner 'William Nottingham,' " and ask you if that is a sketch of her deck plan?

A. Practically, yes.

Mr. CLISE.—I offer this in evidence.

Tracing marked Plaintiff's Exhibit "L," filed and returned herewith.

Q. Describe how you stowed that cargo on deck using this exhibit "L."

A. The sides of the ship here are all clear. We stowed the lumber, commencing usually aft, and just run the lumber from aft to forward until it comes to this point here.

Q. That would be from the poop up to the fore-castle? A. From the poop to the fore-castle.

Q. Now, was this lumber stowed along the sides

(Testimony of Capt. A. W. Swenson.)

in one continuous pile, or were there broken spaces between?

A. There were some broken spaces, but we endeavored to put it down as close together as possible, that is as far as the stowage would allow us. The lumber is different sizes and therefore we have to try to match it as much as possible in order to get it to fit together as it has to be level at all times.

Q. Where it was piled along the sides here, is there any [233] opportunity for the water to wash across the deck between the timbers?

A. Very little.

Q. Very little?

A. I will state here, that abreast of the pump there is left usually a space, so I usually use a space of four inches to allow the water to run out from the pump when pumping her out; that is about all the space that is left there.

Q. Otherwise the lumber is more or less continuous? A. In a solid mass.

Q. Now, then, did you stow the lumber across the entire deck, over the hatches and everything?

A. Yes, sir.

Q. If you stowed it over the hatches will you describe how you did it?

A. We stowed it in between the hatches until it comes up about four inches above the coaming of the hatches, then we put the biggest kind of timbers right across the hatches over this planking on to the solid parts of the lumber that has been put there for that purpose.

(Testimony of Capt. A. W. Swenson.)

Q. Then you put your heaviest timbers right across the various hatches and pile the lumber on top of that?

A. When we get the hatches covered, then we stow the lumber right across all the time, just keep on from one side. There are two gangs of men working usually. One gang works from this side and the other from the other side and they meet in the center.

Q. (Mr. CAMPBELL.) Do you lay the plans athwartships or fore and aft? [234]

Q. (Mr. CLISE.) How high was the lumber piled on the deck?

A. I think the report says 13 feet six inches. Something like that. I cannot remember.

Q. That is approximate. A. Yes, sir.

Q. It is the usual method of stowing lumber aboard schooners of this character?

A. That is the usual method, yes.

Q. After you had your cargo towed did you have a survey made? A. Yes, sir.

Q. And report?

A. A survey was made in Astoria, not at Westport.

Q. And was that in writing? A. Yes, sir.

Q. Was that delivered to you by the man making the survey? A. Yes, sir.

Q. Is this the paper that was delivered to you at that time? A. Yes, that is the paper.

Q. Who gave it to you?

A. A man by the name of Cherry.

Mr. CLISE.—I offer this report in evidence.

(Testimony of Capt. A. W. Swenson.)

Mr. CAMPBELL.—I object as hearsay and being evidence of transactions with an outside person.

Paper marked Plaintiff's Exhibit "M," filed and returned herewith.

Mr. CLISE.—I intended to agree with you that Captain Crow's report should go in and not make the objection because of it being a report made by a deceased person. [235]

Mr. CAMPBELL.—If we can agree on that, then I will withdraw this objection.

Mr. CLISE.—Will you admit that this is Captain Crow's signature to this report?

A. (Mr. CAMPBELL.) Yes, I think it is. I will admit that is his signature.

Q. On your way from Westport to Astoria you went aground, did you? A. Yes, sir.

Q. Now, after you were at Astoria, did you have the vessel surveyed again? A. Yes, sir.

Q. And was the report of that survey in writing? A. Yes, sir.

Q. And is this the written report that was given to you after you reached Astoria? A. Yes, sir.

Mr. CLISE.—I offer this report in evidence.

Mr. CAMPBELL.—I offer the same objection as to the other report, subject to any arrangement that may be made later.

Paper marked Plaintiff's Exhibit "N," filed and returned herewith.

Q. Captain, what happened when the vessel went aground between Westport and Astoria?

A. She was left aground over night. Finally

(Testimony of Capt. A. W. Swenson.)

pulled off by the assistance of two tugs.

Q. Where was it that you went aground?

A. At the entrance of the slough to Westport.

Q. What was the state of the tide when you went aground? [236] A. High tide.

Q. Did you stay aground until the next high tide?

A. Yes, sir.

Q. And you did not float? A. No, sir.

Q. Do you remember what time you left Astoria?

A. On the 2d day of October, 1911.

Q. You took your cargo at Westport?

A. Yes, sir.

Q. And fully completed your loading at that point? A. Yes, sir.

Q. (Mr. CAMPBELL.) Is Westport above or below Astoria? A. Above Astoria.

Q. Is there not a place of that name below Astoria?

A. I have heard the name mentioned—I do not think it is Westport but Freeport.

Q. (Mr. CLISE.) How far above Astoria is Westport?

A. In miles I could not say. We took about four hours in going up. I did not time her coming down.

Q. (Mr. BOGLE.) This survey report, the last one, was made at Astoria, after you were fully loaded and had been stranded and pulled off and then moved down to Astoria?

A. That was the final survey.

Q. The report that you just handed in.

A. Yes, the last one, that was made at Astoria.

(Testimony of Capt. A. W. Swenson.)

Q. (Mr. CLISE.) Now, Captain, describe your voyage from the time you left Astoria up until the time you abandoned the vessel?

A. Well, on leaving, the weather was fair with southerly wind? The bar was kind of rough, but not rougher than [237] we could safely go out. Nothing unusual happened on standing off shore. After I got out and everything was straightened up on deck, I told my mate to sound the pumps, and he sounded the pumps and he found fifteen inches in the well.

Q. Had you examined the vessel after she was loaded and prior to leaving Astoria?

A. Yes, sir.

Q. What condition did you find her in prior to leaving Astoria?

A. I found nothing wrong with her. She was making no water, practically tight.

Q. And was this at Astoria that you made the examination? A. Yes, sir. Shall I continue?

Q. Yes, go on.

A. I told the mate to send the men to the pumps and pump her out. You will understand 15 inches of water after a vessel has been lying in port for a time and not been pumped out since she arrived, is a normal amount of water to be in a vessel. So I did not feel uneasy. And then pumped her out. And four hours after I sent down to try the pumps again, and it took a little longer than usual. But sometimes there is a lot of drain from the different parts of the ship that causes probably the water to

(Testimony of Capt. A. W. Swenson.)

drain through the wells, and the men might not have pumped as hard as others would and it might take a little longer, I thought, to pump her out than it should have done. And this continued on, although I did not feel uneasy. But after about two days it took them about an hour every four before they could get [238] her free from water. This did not make me feel uneasy at all because we had quite a breeze of wind blowing about thirty-five miles an hour or so, but with the shift of wind, the wind shifted to the southwest somewhat, and the wind increased and compelled me to put the vessel on the starboard tack. As I was well off shore I could afford to stay on the starboard tack down the coast. There is a part of my report which I omitted which I would like to state here, if I may be allowed to; things slip a man's memory sometimes but will come back afterwards. When I put the vessel on the starboard tack the sea was pretty rough, and she took an unusually heavy lurch to port, and the deck load shifted the least bit. I did not feel uneasy then at that time, but it showed afterwards that it complicated matters considerably, as she commenced to make water very freely. I tried to examine where this water came from. Well, the water was coming in one place and I went to examine, this was the break of the poop, in the storeroom under the break of the poop, that is what is called the half deck, and I found the water.

Q. Now, Captain, referring to Plaintiff's Exhibit "L," will you indicate on this plat where this break

(Testimony of Capt. A. W. Swenson.)

occurred. Take a pencil and draw a line out here and mark it with an X.

A. This is the break of the poop marked X.

Q. The line extending across the vessel near the poop-deck which you have marked with two X's indicates the break of the poop?

A. Yes. The space below the break of the poop we call [239] the half deck, where we keep stores, etc.

Q. That is beneath the main deck?

Q. That is beneath the main deck.

Q. Now, continue.

A. I found the water that was coming in there—well, in fact it was pouring in from above into this half deck through the break of the poop on the port side.

Q. Now, did this lurch of the cargo do any damage?

A. Not at the time, not that I know of. I also went forward and found that the galley was flooded, afloat with water, coming in somewhere, through the shifting of the deck-load.

Q. Where is the galley situated?

A. The galley is situated right there.

Q. Mark that. A. I have marked it with a G.

Q. That is situated under or above the main deck?

A. Above the main deck. Now, the water was coming in here.

Q. Mark that point with a Y where the water was coming in near the galley.

(Witness does so.)

(Testimony of Capt. A. W. Swenson.)

Q. Proceed now.

A. It was filling up the galley to such an extent that it drove the cook out of there, he could not stay there. That came through the quick work. The quick work opened up and let the water in there. I could not tell how far the damage went down, I could not say, but the probability is it opened down between the main rail and the covering board, down between the timbers.

Q. What was the condition of the sea at this time?

[240] A. It was rough, very rough.

Q. Would the water come over the decks?

A. Not over the decks, no, but it came over the rails and went over the decks.

Q. Would that flood the main deck?

A. Not very much, no. The vessel laid over considerably, most of the water was all on the lee side. This vessel takes very little water over her from the weather when lumber loaded.

Q. How would the water get into these places that had been opened up?

A. From the lee side, from the port side. The wind was over the starboard side and the vessel laid over on the port side. And the lying over caused this part to get under water.

Q. Would this part be under water?

A. Partly.

Q. Sufficient so as to take in the water that you have indicated? A. Yes.

Q. When this increase of water came in were you able to handle it with the hand-pumps?

(Testimony of Capt. A. W. Swenson.)

A. That is the time I found out. I sent the men down there and kept them down there and they worked there for four hours and no sign of suck in the pump, that is the way we put it, that is they were not able to get her free.

Q. What did you do then?

A. Then I ordered the mate to start the steam-pump, and something happened to be wrong with the steam-pump, I could not tell just what it was. It happens sometimes [241] that a piece of wood or something gets in the valve and clappers and prevents the pump from doing its proper work, and it is hard at times to find out just what it is or to locate it. Sometimes have to take the pumps all to pieces entirely in order to find out. Other times it clears itself and works without any trouble.

Mr. CAMPBELL.—I move to strike the conclusions of the witness.

Q. When did you last use this steam-pump?

A. At Astoria before leaving.

Q. In what condition was this pump at that time?

A. Apparently in good condition. But I will state here that I did not use the pumps for the purpose of pumping the vessel out. We used it for washing her down. That is I had an additional suction-hose on to the pump and lead it over the side and closed the valve of the pipe that lead down in the hold. And apparently the pumps were in good condition, pumping the water over from the side of the ship washing down the vessel.

Q. Anticipating somewhat Captain, later the

(Testimony of Capt. A. W. Swenson.)

pump was in such condition that you could use it?

A. Well, they got it in good order to be used, we worked with them considerably, but I do not remember whether they were taken to pieces or not. I cannot call that to memory, but it was sometime before they did get them to work.

Q. Did you find any mechanical defect or anything of that sort? A. No, no.

Q. Now, to resume, when you found that the hand-pumps would not handle the water and the steam-pump failed to work. [242] what happened?

A. Well, I did not know anything about it, but I tried to get to port somewhere, where I could remedy this matter if possible.

Q. Now, what was the condition of the sea and wind during this time?

A. Oh, it was *winding* and was rough. We were under short sail, hove to.

Q. What sails did you have set?

A. I had double reefed mainsail and mizzen out, and the glass indicated still heavier blow than it was. As a matter of fact the wind subsided, the southerly wind, the southerly gale subsided almost to a calm, but the glass still kept on dropping, indicating some heavy gale from the opposite direction, so I did not attempt to make sail. I was at this time trying to run for Cape Flattery.

Q. How much water did you have in the vessel at this time?

A. I think I might have had—it is hard to sound, because she was lying over and I could not get the

(Testimony of Capt. A. W. Swenson.)

true sound, but she probably was half full—no, she could not have been half full, I do not think so.

Q. When was this, can you give the date?

A. It was on the 8th that I was took with this heavy gale, I think. Yes, on the 8th I was struck with the heavy gale coming from the northwest.

Q. This was after you had the southwest wind?

A. Southeast wind.

Q. The southeast wind, that continued with a heavy sea and then suddenly dropped? [243]

A. Yes.

Q. And how long afterwards was it before you got the wind from the northwest?

A. I had the southeast suddenly and the southwest wind from the 2d of October until the 8th of October.

Q. Do you remember about what time on the 8th of October the wind dropped before you got the gale from the northwest?

A. Well, it gradually died away on the 7th, about the end of the 7th, because I was anxious about any wind, I did not dare to put on sails because of the glass dropping.

Q. Did you or did you not continue to make water?

A. She still continued to make water, yes, and the men were down at the pumps all the time, up until the time—I don't just remember what time it was, they were getting the steam-pump to work, but I think my report shows the report given to the adjusters, I think shows the time. It was more fresh

(Testimony of Capt. A. W. Swenson.)

in my memory. My own report did not show that because I forgot it.

Q. During the time, after you found that the steam-pump would not work, did you endeavor to repair her?

A. Not until after the accident—do you mean the vessel or the pump?

Q. The pump.

A. We were working at the pump all the time.

Q. That vessel then, as I understand, was not entirely filled with water, but about half full of water up until the calm on the evening of the 7th or the morning of the 8th, is that correct?

A. Yes, sir, that is right. [244]

Q. Then the heavy gale from the northwest came on the 8th, did it? A. Yes, sir, on the 8th.

Q. About what time, in the morning or afternoon?

A. It was in the afternoon, just after noon, I think it was, if I remember right.

Q. When the gale struck you what did you do?

A. It came so suddenly it took one of my boats hanging in the davits, lashed with double lashing, it tore its lashing and threw it out on the water just like a sheet of paper, and the vessel, although she was on the right tack for the wind to strike the sails right, she almost went on her beam ends.

Q. What did you judge to be the force of the wind?

A. Oh, a hundred miles an hour, fully.

Q. Well, what did you do with the vessel then?

A. I tried to get her before the wind, but she was

(Testimony of Capt. A. W. Swenson.)

so slow in getting there that it was some time that she was throwing herself on her beam ends; after the first heavy wind she righted herself some, but during that heavy lurch she shifted her deck-load considerably and that complicated matters considerably. She would not answer to her helm. I tried all that night, tried to get on to the other tack, so that I could get, as we had been using the steam-pump at this time, but when she went over so much, the water came right up in the donkey-room and put the fire out and they were unable to keep up steam, and I was endeavoring to try to get her on the other tack so as to straighten her up and be able to pump her out. But I was unable as she did not seem to [245] answer. I put all sorts of sails on her, all the head sails I put on and tried to get her off around before the wind and off on another tack, but I was unable to do so.

Q. Now, you spoke of the steam-pump working. About when did you get the steam-pump to work?

A. I cannot remember, but it seems to me that we got the steam-pump to work—we had the steam-pump working, I think, on the 6th, but I am not clear on that point. I know it began working sometime before we struck that heavy gale.

Q. Now, did you make a written report immediately after you came ashore? A. Yes, sir.

Q. I hand you this paper and ask you if this is one of the reports which you made. Look and see if that is your signature to it.

A. That is my signature.

(Testimony of Capt. A. W. Swenson.)

Q. Is that one of the reports that you made at that time? A. Yes, sir.

Q. Now, I will hand you that paper for the purpose of refreshing your memory, and ask you to examine that so that you can be definite as to the time when the steam-pump started?

A. I think I left that out of that report. I know the steam-pump was working before the time stated there. That is the reason I am not clear on that point. I had so much to think of at that time that I let a lot of things go that probably should have been put in. But I know the steam-pump was working before this time. But I had [246] forgotten.

Q. The steam-pump was working before this heavy gale struck you? A. Yes, sir.

Q. Continue, Captain. You were describing how you were endeavoring to bring the vessel before the wind.

A. Well, I was unsuccessful in this, and as she laid over so much and the water got up and put the fire out in the donkey-room, I was unable to use the steam-pump any longer and the vessel continued to fill. I could tell by the feel of her that she was filling as she commenced to lay over more and more all the time. Early on the morning of the 9th I saw it was a case of having to do something in order to save ourselves, or save something of the vessel, save something of the cargo. I came to the conclusion that I would try to jettison the deck-load. I made preparations for this purpose, but before these preparations were completed she laid over so much the deck lash-

(Testimony of Capt. A. W. Swenson.)

ings parted. When the deck lashings parted, the deck-load took a slide to port and up against the rigging and carried away three masts, and the masts and the deck-load even with the rail went over the side. The wreckage was held by the forespringstay and in order to get ride of the wreckage I had to cut the springstays. I asked for volunteers and one man volunteered to go up on the foremast and cut away the forespringstay, and that relieved me immediately on the wreckage.

Q. What do you mean by cutting the forespringstay?

A. The spring stay, that is the stay that holds the masts [247] together. There is a stay between each mast, a heavy piece of wire that goes from one masthead to the other continuing from forward to aft. That holds the masts together. And the forward end, the one that was fast to the foremast, did not carry away as the masts went overboard, but held the wreckage alongside the vessel and it was necessary to have that cut away in order to clear the vessel from the wreckage.

Q. Now, what was the condition of the wind?

A. Well, the wind was very light then, light from the westerly; fine weather at that time.

Q. What was the condition of the sea?

A. The sea was quite heavy, quite a heavy swell, but it was smooth.

Q. Was that the condition of the weather at the time the deck-load went overboard? A. Yes, sir.

Q. What was the cause of the deck-load sliding off

(Testimony of Capt. A. W. Swenson.)

the deck of the vessel?

A. Why, the parting of the deck lashings and the masts carried away.

Q. What I wish to get at Captain is, what caused the lashings to part if the weather was so fine and the sea was not rough?

A. The heavy list that the vessel had to port, as she filled with water she listed so heavily; in fact she was going over all the time, and that is what I was afraid of, that she would turn over. That is why I made preparations to jettison the cargo, and I did not complete my preparations, as I stated before, before the deck [248] lashing parted, she laid over at such an angle, such a degree, that the deck lashing was not sufficient to hold the heft.

Q. About what angle was the deck at this time?

A. Well, at that time we could not stand on deck. We hung on like this to the upper rail. I could not say, it must have been 60° or more.

Q. Well, after you got the spring stay cut and rid of the wreckage, what did you do?

A. Well, then, we tried to ascertain if possible whether we could get the water out of the vessel, and try to find out the damage, etc., after she got straight and put the steam-pump to work again, why we started to pump her out, and we found that the water was coming through the holes in the side caused by the chain-plates tearing out, and we rigged a raft and went over the side and made plugs and plugged up all these holes. Then we continued to pump and we nearly succeeded in getting the water out of her. I

(Testimony of Capt. A. W. Swenson.)

had by this time set the sails. I had set the foresail and the forestaysail, and rigged some of it on the jury-mast that I put up in the meantime, but the heavy gale set in again from the southeast.

Q. Now, then, Captain, when you started the donkey-engine, were you able to operate it without any difficulty? A. Yes, sir.

Q. Had anything happened below decks when the vessel lost her deck-load or during this gale?

A. Well, that I could not tell. I could not get below deck to examine her.

Q. Did you have fresh water to operate your donkey-engine with? [249]

A. No. Apparently when the deck-load went overboard, something forward there caused the connection between the donkey-boiler and the fresh water-tank to break and we lost all the fresh water.

Q. How many fresh water-tanks had you on this vessel? A. I had two.

Q. And where was this tank that you were operating the donkey-engine situated?

A. Underneath the fore-castlehead above the main deck. It was connected by a pipe with the donkey-boiler so that I could use it for the purpose of raising steam. This pipe, I found, after we cleared the wreckage, had broken and we were then entirely without this water.

Q. Where was the second water-tank?

A. The second tank was located on the aft part, underneath the main deck, on the aft part of the vessel, and, in shipping the pump, I had a small

(Testimony of Capt. A. W. Swenson.)

pump that I screwed on to the pipe flange in the break of the poop in order to pump this water out, and I found that water to be salt.

Q. You found that—

A. The water in the aft tank.

Q. Evidently filled with salt water?

A. Yes, sir.

Q. So do I understand you were then entirely without fresh water?

A. Entirely without fresh water.

Q. Well now, what was the condition of the forepart, of the galley, the donkey-engine, cabin and storeroom?

A. Well, it was completely gutted of everything. In fact the donkey itself, all the connections were broke and it [250] took quite a while. My mate set to work to repair it which he succeeded in doing, in order to pump her out.

Q. When you say that the cabin, storeroom, donkey, galley and cabin were completely gutted, what do you mean by that? That they had filled with water or that the action of the water—

A. The action of the water. They were full for a space of time, the whole cabin and the forepart of the forecastlehead, that is up half ways, was full of water at one time, before the deck-load went overboard.

Q. Now, what became of the stores in the storeroom, were they injured by reason of the action of the water?

A. Well, they were completely destroyed by the

(Testimony of Capt. A. W. Swenson.)

action of the water, by the continual washing back and forth, and breaking them up, and those that broke, of course the tins, were spoiled, etc.

Q. Well, after you got the donkey-engine to work, did you operate her with salt water?

A. Yes, sir.

Q. What did you do then?

A. Well, I got her nearly pumped out, as I stated before, and was gaining before the next gale came up, but after that came she commenced to fill.

Q. Captain, explain how your deck-load was lashed to the vessel?

A. The deck-load was lashed by three-quarter inch chain lashings, nine on a side. In addition to this there is what we call the hog-lashing to each mast, that is made fast around the mast, and stretched out across the deck cargo even with the rail and comes up and is made [251] fast again to the mast above the deck-load. These are the principal ones that we depend on most. They are usually heavier, of heavier material than the others. I considered that she was lashed as well as she could have been. That is, I do not consider with the weight, that she could have been lashed with anything except exceptionally heavy, would have held that cargo on.

Q. Is this the usual and customary way of lashing cargo? A. Yes, that is the usual way.

Q. Now, was it customary for schooners of the class of the "Nottingham" to carry a deck-load of lumber? A. Yes, sir.

Q. On voyages of this character? A. Yes, sir.

(Testimony of Capt. A. W. Swenson.)

Q. Did she have any heavier deck-load on this voyage than she usually carried?

A. No, I do not think she had any heavier.

Q. Have you made other voyages in the "Nottingham" where she carried a deck-load of about the same character as this?

A. Practically the same each voyage that I made in her.

Q. Now, I understand, Captain, that after you started the donkey-engine, you pumped the ship practically clear of water? A. Yes, sir.

Q. After you got the vessel clear of water, from what quarter did the wind come?

A. From the southeast.

Q. I call your attention to this report, down at the bottom of it.

A. Yes, the wind continued from the northwest.
[252]

Q. On what day was it that you got her pumped out? A. On the 10th, I think.

Q. Then it was after you had her pumped out that—

A. I have not stated that she was entirely pumped out.

Q. No, but nearly so. You got the second gale that you speak of? A. Yes, sir.

Q. On what day was that?

A. It must have been between the 10th—

Q. You state in the report, on the 11th.

A. That is right, on the 11th.

Q. Then is when another gale came, as I under-

(Testimony of Capt. A. W. Swenson.)

stand, from the southeast? A. Yes, sir.

Q. Then what took place?

A. Well, then she filled. Then the sea commenced to run over her, and she filled in about five minutes after the sea and the wind got up.

Q. When the deck-load went, what happened to your hatches?

A. That I could not tell. I could not examine them. I could not go near them to examine them.

Q. For what reason?

A. She was covered with part of the deck-load, and the sea going over them continuously; it was dangerous to go fore and aft.

Q. Well, if the vessel filled within five minutes, how could she have done so, how could the water have got in there and filled her in such a short space of time?

A. Oh, I felt sure that something was wrong, either with the hatches or with the places where the masts of the [253] ship were stepped through the deck.

Q. Did you ascertain afterwards what had happened, so that you could testify as to how she filled?

A. I tried to, but it was almost impossible to say when the accident to these hatches occurred.

Q. Well, what did you find the condition of the hatches were after you examined her, after she reached Astoria, after the disaster?

A. Well, I did not examine the hatches until the deck-load was taken off at Portland.

Q. What did you find the condition of the hatches to be in then?

(Testimony of Capt. A. W. Swenson.)

A. Well, they were—I found they were broken up considerably; that is, some of them were lifted out of position and broken more or less, some of the main hatches, and some of the aft hatches.

Q. What did you find with regard to the place where the masts had been?

A. Well, these places would have taken in water, lots of it, but not sufficient to cause her to fill so quickly as she did.

Q. Well, after she filled this second time on the 11th, after the second gale from the southeast came, what was the force of the wind and the sea at that time? A. About fifty miles an hour.

Q. How was the sea?

A. Rough, very heavy; came up very suddenly and heavy.

Q. Would or would not the waves wash right over the vessel?

A. Oh, the waves were going continually over the vessel, deluged her with water, hundreds of tons of it, washed clear [254] over, waves running clear over.

Q. What did you do with the vessel after she filled this second time?

A. I put the forestaysail on her and put her before the wind. That is the only thing that I could do. I endeavored then to try to steer for Cape Flattery. The wind was from the south; that was my only course, and thinking of being sighted by some steamer that could render assistance.

Q. Were you sighted by any steamer?

(Testimony of Capt. A. W. Swenson.)

A. Sighted two steamers, but they failed to respond to our distress signals.

Q. What distress signals did you use?

A. Well, we burned blue lights. I had quite a number of them on board, and I burned the blue lights for two hours through the rigging one night, for a steamer that apparently lay by us, but as daylight came I saw the steamer disappearing, apparently not noticing us.

Q. What officers did you have on board besides yourself?

A. I had a first and second officer.

Q. What are their names?

A. The first officer's name was William Brown. The second officer's name I cannot recollect; we have so many of them. I do not memorize their names.

Q. This man Brown, did you know him?

A. He had been mate with me then for two years.

Q. Do you know what papers he had?

A. Yes, he had master's papers; I think he had master's papers for sail.

Q. What crew did you have on board?

A. I had a Union crew, what we call a Union crew, shipped [255] by the Coast Seamen's Union, in Portland.

Q. How many men?

A. Seven before the mast; six sailors and what we call the donkeyman.

Q. Who else did you have on board?

A. Cook. Seven sailors, two mates, cook and myself.

(Testimony of Capt. A. W. Swenson.)

Q. Were any representations made to you by the crew or the officers as *sho* what should be done after this second disaster, or at any time?

A. There was nothing, no representations made until the schooner "David Evans" hove in sight on the 13th, I think it was.

Q. What representations were made to you at that time?

A. Well, they wanted to abandon the vessel. They were almost crazy for the want of water.

Q. Now, your fresh water was all destroyed on—

A. On the morning of the 9th.

Q. What day of the month was it that you sighted the "David Evans"?

A. The 13th, I think I stated.

Q. Now, during this time, had both yourself and officers and crew been without water, fresh water?

A. Entirely without *out* it, yes.

Q. What did you have in the nature of food during this time?

A. Well, we had canned food that was not destroyed, that we managed to save. We had canned meats and canned vegetables.

Q. Now, what did you have as a substitute for water during this time?

A. Well, I had some—perhaps it might not be a substitute— [256] I thought it was a substitute, I had some claret wine on board. I did not know how much to give to them of that; I did not give them very much. I gave them a couple of tablespoonsful three or four times a day.

(Testimony of Capt. A. W. Swenson.)

Q. And was that the only thing they had in the nature of liquid?

A. That is the only thing. That is all. I beg pardon, I had a barrel of beer on board, but I did not try to use it.

Q. Where was this beer situated?

A. That was aft somewhere. In fact I did not try to look for it. I did not see it. I do not know whether it was destroyed or not.

Q. So you do not know whether you had this beer at the time.

A. I found, after I got back to Astoria, that it was not there. The beer was gone. I did not use it.

Q. Were you able to do any cooking?

A. No, sir.

Q. From what time were you unable to cook?

A. From the morning of the 9th.

Q. When the "David Evans" came in sight, what, if any, representations were made to you by the crew or your officers?

A. Well, they all came to me and wanted to leave the vessel; that is, without asking questions of me until when the "David Evans" came up, they all got in the forecabin and put all their clothes on and were tied around with bundles, and I remonstrated with them then. I says, "What are you trying to do?" I says, "If you jump overboard with those clothes, you will drown. If you get overboard with your clothes on, you will drown, better take them off." [257] I says, "Furthermore, we are not going to leave this vessel." The second mate he made the

(Testimony of Capt. A. W. Swenson.)

remark to me, he says, "Captain," he says, "If you do not let us leave this vessel with the boat, that is providing the 'David Evans' *came* come here in a boat," he says, "I will simply jump overboard and swim to her," and he says, "You know that we have been without water for four days, and I cannot stand it much longer," and the rest of the crew, they spoke up the same way, and then I told them, "You will have to wait until the wind and weather subside; you could not launch a boat in this kind of weather." Towards noon the wind subsided and made it a little smoother, and the "David Evans" came up just on our port bow and broke all her sails down except the forestaysail. She had practically only the sails that we had on. I began trying to tell the captain of the "David Evans" to go about his business, go into Astoria and report us, but he did not seem to want to understand this, so he came up and hove to right in front of us, and then of course the men renewed their request of me that they certainly ought to leave the vessel. I then took the mate on one side, and I says—

Q. That is mate Brown?

A. Yes, sir. He had been on my side up to this time *for not for* leaving before I took him on one side. He says to me, he says, "I can launch that boat." Then I took him to one side and I says, "Do you mean to say that you want to leave this vessel?" "Why," he says, "Captain, I don't see nothing else to do." He says, "What is there to do? What chance have we got? We have got a chance to save

(Testimony of Capt. A. W. Swenson.)

our lives now," he says, "but," he says, "with a southeast gale coming [258] the only place we can go is for Cape Flattery or the Vancouver shore, should we not succeed in being picked up by a steamer, we would probably land on the rocks on Vancouver shore and all be lost; with wind from the southwest the chances are we would go ashore on the coast of Washington, somewhere between Gray's Harbor and the Columbia River."

Mr. CAMPBELL.—We do not question the judgment in leaving the vessel.

Mr. CLISE.—I understand you do not question the propriety of the captain abandoning the vessel?

Mr. CAMPBELL.—Certainly not. I think we would have all done it.

Q. (Mr. BOGLE,) The "David Evans" could not have towed you, could she? A. No.

Q. (Mr. CLISE.) Then as I understand, you did abandon the vessel under these conditions?

A. Yes, sir.

Q. Was it your opinion that it was the only thing to do under the circumstances?

A. Well, I saw it that we had nothing else to do; we could not do anything else under the circumstances without the vessel being reported by someone, there was only one chance in a hundred that she would be picked up before she got on the beach.

Q. What became of your log-book?

A. The log-book?

Q. Yes.

A. The log-book was entirely destroyed. That

(Testimony of Capt. A. W. Swenson.)

was in the mate's room. The mate's room was gutted. He lost [259] everything he had. I had to give him some of my clothes to go ashore with.

Q. So the log-book was destroyed?

A. The log-book was destroyed.

Q. Then you were taken aboard the "David Evans." What did the "David Evans" do?

A. She set her course for the Columbia River, where she was bound.

Q. Where did she run to?

A. We arrived in Astoria on the 14th, the next day.

Q. What did you do?

A. The first thing I did—before I got ashore I reported the position of the "Nottingham" to a tug, I think it was the "Tatoosh"—no, the "Goliah," Captain Bailey, he was alongside, and as soon as I had a chance with the tug of the "David Evans," when he came alongside, I gave him the position.

Q. What was the name of that tug?

A. The "Wallula."

Q. That was the name of the tug that rescued her?

A. Yes, sir.

Q. Did you make any report to any other?

A. Well, I made an official report, the same as you have there.

Q. To whom did you deliver that?

A. I made several copies of it.

Q. Did you make a report to the marine officers there at Astoria?

A. I made a report to the custom-house, the wreck report.

(Testimony of Capt. A. W. Swenson.)

Q. (Mr. CAMPBELL.) That is called the wreck report at the [260] Custom-house at Astoria?

A. Yes, sir.

Q. (Mr. CLISE.) When did you next see the "Nottingham"?

A. I saw the "Nottingham" on the 15th.

Q. Where was she then?

A. I saw her as she was being towed into Astoria by the tug "Wallula." I think that was the 15th. I stood on the wharf and saw her being towed in.

Q. Was the crew which you had on this voyage the usual crew for schooners of the class of the "Nottingham"? A. Yes, sir.

Q. Just prior to loading at Westport, what was the voyage that you were on?

A. Just had completed a voyage to Australia, a cargo of lumber to Australia and a cargo of coal back to Astoria.

Q. Back to Astoria. A. Yes, sir.

Q. Now, on this voyage were you as deep in the water going to Australia as you were on this voyage leaving Westport? A. Practically the same.

Q. On this voyage did you encounter any heavy weather? A. Yes, at various times.

Q. Did you encounter as heavy weather as these two storms?

A. Yes, continued longer. I would not say that I had a wind as strong at any time as I had for a few minutes when it took the boat away and throwed the vessel over, but I had just as heavy storms that continued longer, several times during that voyage.

(Testimony of Capt. A. W. Swenson.)

Q. During this voyage did the vessel make any water?

A. No, sir, nothing to speak of, not more than this class [261] Vessels usually do, a wooden vessel makes more or less water. There are hardly any of them that are entirely dry.

Q. During the time that you were loading at West port, did she make any unusual water?

A. She did not make any water at all, then.

Q. While the vessel was at Sidney did you have any repairs made on her? A. Yes, sir.

Q. What?

A. I had her drydocked, cleaned and painted, and all her soft places and butts calked. In fact I had her thoroughly examined for all such places all over, and all places where it was found was calked and cemented.

Q. About when was this?

A. Well, I would not be able to tell you the date.

Q. Well, was it April or May, or March?

A. I will have to think. I arrived in—it must have been in April I arrived in Sidney.

Q. 1911?

A. 1911. April or May. May have been May.

Mr. CLISE.—It is agreed that these repairs were made in Sidney in April, 1911.

Mr. CAMPBELL.—Yes.

Q. Now, when the "Nottingham" was towed up the Columbia river from Astoria to St. Johns, were you on her? A. I was.

(Testimony of Capt. A. W. Swenson.)

Q. And was there any water in the vessel at that time?

A. Yes, there was some water, I think there was about three feet of water in her. [262]

Q. Would that render her navigation any more or less difficult?

A. Well, it would have some—it would make it a little more difficult than if she was entirely free, it certainly would in the hands of unskilful pilots, etc., it would make a difference.

Q. Now, Captain, can you give any explanation, other than you have already given, as to how the “Nottingham” made this water?

A. I cannot. I examined that vessel after she had been drydocked. I examined her on the drydock and I examined her after she got off the drydock. I went around her.

Q. (Mr. CAMPBELL.) You mean at Sidney, Australia?

A. No, St. Johns. I slung stays over the side as painters would in painting a house and went all around and examined the seams and butts, etc. With the exception of a very few soft places, I found her good. I found one place aft at the stern post, the wood ends there, about six inches long, where I could put a case knife in alongside the oakum quite freely.

Q. Did you read the testimony of Captain Gibbs in this case? A. No.

Q. You have not seen his testimony?

(Testimony of Capt. A. W. Swenson.)

A. No, sir. I could put a case knife or a table knife in there.

Q. Now, then do you mean that the width of this opening was the thickness of a case knife, or was it wider or less?

A. Well, I don't think you could get more than a case [263] knife in at the time I examined her.

Q. How long was this open?

A. About six inches long.

Q. How far could you put this case knife in?

A. Well, between two and three inches.

Q. Was there any oakum in the seam at that time?

A. Yes, there was some oakum in there.

Q. Now, then, if there had been no oakum in this seam, and you could put your case knife through the width of the plank, what would you then have encountered. In other words, please explain the construction of the stern of the vessel there?

A. Well, a small space like that six inches long, without any opening entirely through, according to the construction of the vessel it should not let any material water in whatsoever, because it is one mass of solid wood there and the planking is fitted outside of this wood and if it is done properly, by proper mechanics, it should be tight without any oakum in that seam at all.

Q. How thick was this solid construction that you speak of?

A. Well, it is various thicknesses. It ought to be at least two feet of solid wood there.

Q. This solid wood, you do not mean one piece, but

(Testimony of Capt. A. W. Swenson.)

built up of a number of pieces?

A. Yes, a number of pieces.

(Recess taken until 1:30 P. M.) [264]

Afternoon Session, 1:30 o'clock.

Present: Mr. CLISE and Mr. BOGLE, for the Plaintiff.

Mr. CAMPBELL, for the Defendant.

Capt. A. W. SWENSON, on the stand for further direct examination.

Q. (Mr. CLISE.) I understand you wish to make same corrections in the answers that you gave this morning? A. I do.

Q. Just state.

A. In answering about the preliminary survey, I stated it was handed to me by a Mr. Cherry. I got a little confused. It was mailed to me by Captain Crow, and the other one was handed to me, the final survey was handed to me by Mr. Cherry.

Q. Then you wish to make a correction as to having read Captain Gibb's testimony?

A. Yes, I did not quite understand the question.

Q. Have you read his testimony? A. I have.

Q. This seam that you were testifying about and which you said was about six inches long and about the thickness of a case knife, is that the same seam that Captain Gibbs was testifying concerning?

A. Well, apparently it seems to be the same thing.

Q. How did you come to make this examination?

A. My attention was called to that by Captain Crow, and when I was requested by Mr. Thorndyke to make a thorough examination of the top side

(Testimony of Capt. A. W. Swenson.)

of the vessel. I did make that examination that I have already stated. [265]

Q. When was this examination made by you?

A. The date I cannot call to mind.

Q. Did you make this examination in response to a telegram from Mr. Thorndyke?

A. I did, yes, sir.

Q. I will show you this night-letter and ask you if this is the telegram you received from Mr. Thorndyke asking you to make the examination?

A. Yes, sir, that is the telegram received, a copy of it at least.

Q. After examining that telegram, does that refresh your memory as to the date about when you made the examination?

A. The 21st of December.

Q. Now, this telegram is dated the 21st of December.

A. I made the examination the following day.

Q. Now, Captain, will you explain the construction of the water-closet on the "Nottingham"?

A. Well, the water-closet is placed on the aft part of the vessel, on the main deck; from there it has a lead pipe placed down through the timbers, or through the ceiling and timbers and outside planking and is fastened on the outside to the planking of the vessel.

Q. Is the opening in this pipe on the outside of the vessel above or below the water-line?

A. It is above the load water-line.

Q. Well, is there any covering or substance placed

(Testimony of Capt. A. W. Swenson.)

over this opening on the outside of the vessel?

A. We have a piece of heavy leather clapper nailed half way around on the forepart of the pipe, so that when [266] the vessel goes ahead or falls down in the water, this leather clapper closes over the hole so as to prevent any quantity of water reaching up through this pipe.

Q. So that it lets anything from the inside be discharged?

A. Well, usually when the vessel rises you know, it lets the water down, that opens naturally, tends to open that clapper. Of course it is not made fast, solid; it is like on a hinge.

Q. Would the pressure from the water coming against the side of the vessel open or close that clapper?

A. Well, it would have a tendency to close it.

Q. What is the construction on the side of the vessel there that holds the lead pipe?

A. Well, it is solid timbers generally: I think in the "Nottingham's" timber are ten or twelve inches thick.

Q. Now, if the flange from this lead pipe which is fastened on the outside of the vessel, was cracked, would that permit the ingress of water to any degree through that crack?

A. Well, it is hard to say. If that pipe was constructed properly through the timbers it should not let a whole lot of water come in. On the other hand again, if that pipe is constructed so as to lead between the timbers which it should not, then there is a ques-

(Testimony of Capt. A. W. Swenson.)

tion, there would be quite a little water coming through there.

Q. Now, during the course of this storm, did you have occasion to use this water-closet?

A. Yes, sir.

Q. Did you notice any water coming in through at any time?

A. No. After the accident I could not use it at all, after [267] that because it was full of water.

Q. But there were certain times during the storm when the vessel was taking water, that you could use it? A. Yes, sir.

Q. Captain, referring to the hatches of the vessel, as shown on Plaintiff's Exhibit "L," will you please describe how these hatch covers are made, what is the nature of the construction of the covering that you put over these hatches?

A. Well, they are usually made in sections, with sufficient size to cover the space. In the "Nottingham" I think the main hatch had five sections.

Q. What is the size of the main hatch?

A. The main hatch on the inside is 18 feet. As far as I know there seems to be something wrong with this, but I measured the inside of that and found it 18 feet.

Q. 18 feet long. A. Yes, sir.

Q. How wide? A. Twelve feet.

Q. (Mr. CAMPBELL.) Referring to Plaintiff's Exhibit "L," you say there is something wrong with this?

A. I meant to say this size of the main hatch

(Testimony of Capt. A. W. Swenson.)

seems to be wrong, as far as my measurement is concerned.

Q. Referring to this tracing.

A. I only mean this measurement here.

Q. The 21 feet three inch measurement inside shown on the tracing is wrong, according to your measurement? A. Yes, sir.

Q. (Mr. CLISE.) I understand you say this main hatch on [268] the inside is 18 feet long.

A. Yes, sir.

Q. And how wide? A. Twelve.

Q. Now, is there any cross-beam running up the center of it?

A. There is a piece called the strong back running the length of the hatch, the center.

Q. So these five pieces you speak of, do you mean five pieces on each side or five pieces for the whole hatch? A. Five pieces on each side.

Q. They are all of equal size, are they?

A. Of equal size.

Q. Of what are they constructed?

A. Constructed of common iron wood.

Q. Is there anything placed in the hatch to lift them up for any purpose?

A. Oh, yes, there are ringbolts placed in the corners of the hatch to take hold of to lift them off.

Q. You mean that there were five sections on each side, or ten in all? A. Yes, sir.

Q. When the bids were asked for in January, 1912, for the repair of the "Nottingham," did you give out these specifications and details?

(Testimony of Capt. A. W. Swenson.)

A. I did.

Q. Under whose instructions were you acting?

A. Mr. Thorndyke's.

Q. Were these instructions in writing?

A. I think they were, yes. [269]

Q. I hand you this paper and ask you if that was the written instructions that you received from Mr. Thorndyke at the time you asked for these tenders?

A. Yes, sir.

Mr. CLISE.—I offer these instructions in evidence.

Paper marked Plaintiff's Exhibit "O," filed and returned herewith.

Q. Captain, I show you Defendant's Exhibit 10, which shows the port side of the "Nottingham" looking from the stern forward. Does that show the outlet of the water-closet?

A. It does, where it is marked W.

Q. Where the letter W is placed there?

A. Yes, sir.

Q. Does that show the leather clapper that you refer to? A. It does.

Q. Now, then, that is attached, as you testified, on the forward side? A. On the forward side.

Q. What action would the water have coming against that clapper either from the side or from the— A. Have a tendency to close it.

Q. Did you ever see anyone examine that seam near the stern post? A. Yes, sir.

Q. Who?

(Testimony of Capt. A. W. Swenson.)

A. I saw Mr. Walker and Captain Crow together examine that.

Q. About when was that?

A. That was at the time she was placed on the drydock at St. Johns, that was in December, some-time. [270]

Cross-examination.

Q. (Mr. CAMPBELL.) Where was she at the time of that examination, Captain?

A. Where was the vessel?

Q. Yes.

A. She was on the drydock at St. Johns port of Portland, Oregon.

Q. Lifted out of the water? A. Yes, sir.

Q. You saw Captain Crow and Walker examine it at that time? A. I did.

Q. What did they use to examine it with?

A. Well, they had a knife, we sent up to the galley, the cook's galley, and found an old knife there, a table knife.

Q. Are you sure about that? A. I am sure.

Q. On the drydock? A. Yes, sir.

Q. Was there any staging erected by which they got up there?

A. Yes, we used a long ladder.

Q. You used a long ladder? A. Yes, sir.

Q. How long?

A. Oh, 21 or 22 feet. Sufficiently long to reach there anyway.

Q. At what draft was that open seam?

A. Well, I should judge it was about 22 feet,

(Testimony of Capt. A. W. Swenson.)

twenty-one feet six or twenty-two, something like that. I never measured it. [271]

Q. Was she on the keel blocks at that time?

A. She was.

Q. How high were they from the floor of the dock?

A. About three feet, I think.

Q. And you say a ladder was placed against her stern and these men went up there and examined it?

A. Yes, sir.

Q. Did you? A. I did not go up, no.

Q. Now, you have just been testifying about the water-closet. The only purpose that this clapper would serve would be to keep the sea from rushing back into the inside of the pipe, would it not?

A. Yes, sir.

Q. That is intended as a protection, to keep the water from rushing back into the closet itself, is it not?

A. It is there for that purpose, to keep the water from rushing up into the toilet.

Q. It would in no way protect a crack in the flange, would it?

A. It would for the time being. Of course while it was closed just as much as it would it would keep the water from going up into the closet.

Q. Did it fit tightly over that flange?

A. The pressure of the water would keep it pretty close.

Q. Did it fit tightly over the flange?

A. The clapper?

Q. Yes.

(Testimony of Capt. A. W. Swenson.)

A. I examined it when it was put there. It fit tight.

Q. By fitting tight, you mean it simply rested on it? [272]

A. When it was forced up it fitted tight.

Q. Not water tight, was it?

A. Sufficient pressure it would be water tight.

Q. It was simply a piece of leather that was fastened on the plank of the vessel which hung down virtually perpendicular, didn't it?

A. Well, it did not hang down perpendicular. Of course it was the heaviest kind of leather, pump leather.

Q. It was not intended as water tight valve, was it? A. Oh, no.

Q. Now, this water-closet pipe, as I understand it, came down from the water-closet that was in the cabin? A. Yes, sir.

Q. It lead through the cabin floor?

A. Yes, sir.

Q. And turned and went inside of the—

A. It went almost straight, a little slantwise. Almost straight.

Q. Almost straight to the outside of the vessel?

A. A little angle.

Q. And it passed through the ceiling of the vessel? A. Passed through the ceiling.

Q. It did not pass through any of the frames?

A. That is a point I could not tell, for I have not seen the construction.

Q. You never saw the construction?

(Testimony of Capt. A. W. Swenson.)

A. Not that.

Q. Well, is it usual to have these things pass through the frames?

A. Yes, I think so. [273]

Q. Do they weaken the frames of vessels by passing pipes through them?

A. There should be sufficient frame there to allow it.

Q. Is it customary to pass a thing of that size through the frame?

A. There is additional frame put there for that purpose in a well-constructed vessel.

Q. You have no knowledge whether that was done in this case? A. No, I do not.

Q. And it then passed through the outside plank?

A. Yes.

Q. Now, in your judgment, any water that would get in from the crack in the flange alongside of the pipe, would pass down into the bilge, between the plank and the skin?

A. It would pass between the outside plank and the timbers.

Q. And run down into the bilge? A. Yes, sir.

Q. Now, Captain, going back over your testimony as to the circumstances leading up to the trouble that you got into, I understand you to say that you left Astoria in the tow of a tug? A. Yes.

Q. She took you across the bar? A. Yes, sir.

Q. Was the bar breaking? A. Yes, sir.

Q. What you would call a moderate bar?

A. Yes.

(Testimony of Capt. A. W. Swenson.)

Q. Did she strike on the bar going out? [274]

A. No, sir.

Q. You then stood off-shore on the port tack?

A. Yes, sir.

Q. For two days? A. Two days.

Q. What kind of weather did you have immediately after you left port?

A. Well, the first day it was moderate, light moderate southerly wind.

Q. A very fair wind was it not?

A. It was not a fair wind, it was a dead-ahead wind.

Q. What do you mean by fair, in degree?

A. It was a good sailing breeze.

Q. You found that she began to leak shortly after you left the bar? A. I have so stated.

Q. I want to refresh my recollection about it. How soon after the tug left you did you begin to notice that she was making water?

A. Well, I think it was on the second day that I felt, commenced to feel that she was making more than usual.

Q. It was on the second day that you began to use your pump, was it not?

A. Oh, we used—the steam or hand-pump.

Q. The hand-pump?

A. We started to use the hand-pump almost right away. We always do that when we leave port. The first thing we do is to see if the vessel is making any water.

Q. How often did you pump?

(Testimony of Capt. A. W. Swenson.)

A. Well, the first day we did not pump so—practically pumped [275] about an hour out of four.

Q. The first day?

A. No, the first day we did not pump quite so much as that.

Q. The second day did you begin to pump one out of every four hours? A. Yes, sir.

Q. It was at that time that you found that she was taking more water than usual?

A. Yes, I thought so. I thought she was taking more.

Q. Up to that time you had had the fairest kind of weather, hadn't you?

A. Not the fairest kind of weather. The second day it commenced to blow sufficiently to shorten sail but I did not take in sail before I have to. We have to have quite a breeze before I take in sail.

Q. You did not encounter any weather until after the sixth day that required you to take in any sails, did you?

A. I took in sails after I put her on the starboard tack.

Q. But you did not take in any sails until after you had put her on the starboard tack?

A. No, the wind increased.

Q. When you are able to carry all of your canvas, don't you consider it to be fair sailing weather?

A. I did not carry all my canvas. I only carried my lower sails. I did not carry the gafftopsails.

Q. You did not have any of them reefed?

(Testimony of Capt. A. W. Swenson.)

A. No, not until after I put her on the starboard tack.

Q. You had all of your lower sails set?

A. All the lower sails set. [276]

Q. Do you consider it fair sailing weather when you are able to carry all the lower sails without reefing? A. The weather gets pretty heavy—

Q. Do not you consider it fair sailing weather when you can carry all your lower sails without reefing? A. Yes, sir.

Q. While you were sailing in that way you discovered that the vessel was leaking?

A. Yes, she was leaking a little more water than she had been.

Q. Well, a little more water, so that it attracted your attention, didn't it? A. Yes, sir.

Q. And you proceeded to pump at least one hour out of every four? A. Yes.

Q. Now, on the 6th day of October you put her on the starboard tack?

A. Yes, if that is the day.

Q. And you did that because the wind had shifted more? A. To the west of south.

Q. And you were able to stand down along the coast? A. Yes, sir.

Q. And immediately that you put her on the starboard tack you found that she was making more water in her bilges?

A. I made a correction in that part of it which I omitted. After putting her on the starboard tack the sea was so rough and she gave quite a lurch.

(Testimony of Capt. A. W. Swenson.)

Q. I am not asking about that. My questions are plain, I think. [277]

A. All right, go ahead.

Q. When you put her on the starboard tack, you found that she was making more water in her bilges immediately? A. I did not say immediately, no.

Q. What did you mean by your statement then—you made a statement before the adjusters, did you not? A. Yes, sir.

Q. Your recollection at that time was clear, was it not?

A. Well, fairly clear, but still as I say I omitted—

Q. We will come to that later, I know you testified that way. Your recollection was clear at that time?

A. Fairly clear.

Q. To whom did you give this report to which you were referring this morning for the purpose of refreshing your recollection which is entitled "To whom it may concern"?

A. I made several copies of that.

Q. And signed by yourself?

A. I sent one to Mr. Thorndyke. I think Mr. Cherry in Astoria got one copy of it.

Q. How soon was that made after your return to Astoria?

A. That was made immediately on my arrival.

Q. (Mr. BOGLE.) Who was Mr. Cherry?

A. Well, he claimed to represent the underwriters; in fact he professed to be, as far as I know, agent for the underwriters.

(Testimony of Capt. A. W. Swenson.)

Q. (Mr. CAMPBELL.) Lloyd's agent at Astoria, is he not?

A. I believe he is.

Q. Now, in your statement before the adjusters, you said this: "October 6th when in longitude about 128 west [278] the wind hauled somewhat to the west of south and the vessel was put on the starboard tack. As soon as this was done it was found that she made more water rapidly and in a short time it was impossible for the hand pumps to keep her free." Now, that was almost immediately after you put her on the starboard tack?

A. If you want it stated that way, it may be.

Q. Is that not a fact?

A. We do not take these things in instants. I probably found it out four hours after or something like that. I had been pumping every four hours. When I started to pump again, I found it took longer to pump the amount of water out, so I could not just tell.

Q. According to your present recollection, you discovered the first time you pumped after you put her on the starboard tack, that she was making water very rapidly? A. That is right.

Q. You found it was impossible to handle it with the hand pumps? A. Yes, sir.

Q. Now, at the time when you made up this report from which you refreshed your recollection, you were right fresh from your troubles, were you not?

A. Yes, sir.

Q. You were making that up as a solemn state-

(Testimony of Capt. A. W. Swenson.)

ment of what took place, were you not?

A. Well, I tried to.

Q. You rendered that report to your owners?

A. Yes, sir.

Q. You gave it out publicly as the circumstances attending [279] the disaster? A. Yes, sir.

Q. Well, why was it, Captain, that your recollection now, more than a year after the trouble, is fresher than it was at that time, as to your deck-load shifting when you put her on the starboard tack?

A. Well, I will tell you. Of course, at that time I tried to make things as brief as possible, and I could not think of everything at the time, that is the reason.

Q. Sometime after that, you made this sworn statement before the adjusters, didn't you?

A. Sometime after, yes.

Q. Why was it at that time that you did not recollect your deck-load shifting when you put her upon the starboard tack?

A. Well, I do not know why I could not recollect it.

Q. Have you been discussing this case with your counsel before testifying here?

A. I have discussed it, but that is a part I have not discussed.

Q. You never mentioned that?

A. I told them that that part I had omitted, without them asking me any questions.

Q. When did you first remember that you had omitted that?

(Testimony of Capt. A. W. Swenson.)

A. Well, I could not tell you, but after going over the business, that is over the trouble, over and over again I found that I had omitted things that should have been written.

Q. When did you see this statement that you went over? A. When did I see it? [280]

Q. Yes, when was it that this came to you?

A. I could not tell you, it is a long time ago now.

Q. Did you make any effort to correct the statement that you had made to the adjusters? A. No.

Q. Did you report it to your managing agent, Thorndyke? A. After I came back again.

Q. This time? A. Yes.

Q. He was discussing with you at that time the unseaworthiness or seaworthiness of this vessel, was he not? A. Yes, he has been discussing that.

Q. And at that time you recollected the shifting of the deck-load when you put her upon the star-board tack? A. I recollected it before that time.

Q. How long before that time?

A. Well, probably a year ago, or so.

Q. You did not make a report of that to your principals?

A. No, not at the time. Of course, I have been away to sea ever since.

Q. But you were in port for a considerable period following this disaster? A. Yes, sir.

Q. For nine months, were you not? A. Yes, sir.

Q. During that interval you never made any attempt to correct it?

A. No, it never came to my mind.

(Testimony of Capt. A. W. Swenson.)

Q. Never came to your mind. Now, the first severe gale of wind you encountered was about the 8th of October? [281]

A. Well, we had a gale from the southeast before that. I had occasion to shorten sails.

Q. How much did you shorten them?

A. Double reefed the mainsail and the mizzen.

Q. Now, that weather at that time was not any severer than you would ordinarily encounter or expect to encounter on a voyage on this coast at that season of the year?

A. It was a little early for these kind of gales in October, a little early.

Q. Don't you begin to get southeast gales in October?

A. Yes, they commence sometimes earlier.

Q. You had passed through equally as severe weather as that southeast gale hundred of times before? A. Yes, sir.

Q. So that it was the character of weather you might expect on a voyage off this coast? A. Yes.

Q. When you put her on the starboard tack, you found that your hand-pumps were not able to take care of the water? A. Yes, sir.

Q. Then you tried to work your steam-pump?

A. Yes, sir.

Q. And you found it out of order?

A. Yes, apparently.

Q. It would not work? A. No.

Q. For that reason you could not keep her free of water? A. For that reason.

(Testimony of Capt. A. W. Swenson.)

Q. And she gradually filled on you, is not that the fact? A. Well, now, no, it is not. [282]

Q. Well, we want the facts. What do you mean by saying it is not?

A. We got the steam-pump to work after that. I already have testified to that. And if we had not got that heavy gale from the northwest I have no doubt in the world we would have pumped her out and that accident would not have happened.

Q. But at this time you were not able to free her of water by reason of the steam-pump being out of order? A. That is right.

Q. And by reason of that fact the water kept gaining on you until she was in more or less water-logged condition?

A. Yes, but when that heavy gale struck us, the steam-pump was working then.

Q. We will come to that later on.

Mr. CLISE.—You are not required to answer questions with yes or no. You can answer the questions in such manner as you think best and responsive to the question.

Mr. CAMPBELL.—If my question calls for an answer, yes or no, he can answer and then explain.

Q. Now, what did you continue to do when you found that your steam-pump would not work?

A. Well, we continued to try to find out the reason why it would not work.

Q. You say that you had used this steam-pump in Astoria? A. Yes, sir.

Q. And washed down the ship? A. Yes.

(Testimony of Capt. A. W. Swenson.)

Q. What portion of the ship were you washing down? [283] A. The forepart and aft part.

Q. But the suction that you then used was not the suction that extended into the bilges of this vessel, but an overboard suction?

A. It was not the same.

Q. It was a suction that went overboard?

A. The suction we used for washing down the ship went over the side.

Q. Now, did Captain Crow himself personally look over the vessel while she was at Astoria?

A. No, sir.

Q. Was he aboard of her at all while she was at Astoria?

A. No, sir. Not on the outward voyage.

Q. I speak of the outward voyage. He then made no personal examination? A. No, sir.

Q. Was this steam-pump examined by him at Astoria? Before your vessel went to sea?

A. No, sir.

Q. Was it examined by any other surveyor?

A. I think Mr. Cherry went into the pump-room, yes.

Q. Was Mr. Cherry a surveyor?

A. Well, he claimed to be. He was authorized by Captain Crow to make this survey.

Mr. CAMPBELL.—I move to strike the conclusion of the witness.

Q. Did you work the steam-pump for him?

A. No.

Q. You did not try the steam-pump on the bilges

(Testimony of Capt. A. W. Swenson.)

at all after you left Westport, did you? [284]

A. No, sir. I had no occasion. There was no water in the vessel.

Q. So that the first time that you tried this steam-pump after you put your cargo on to the vessel, was when you got into trouble after you left the river?

A. That was the first time.

Q. How much did this deck-load shift, as you have stated, when you put her on the starboard tack?

A. About four inches.

Q. Four inches. That is the top of it shifted four inches? A. From the rail up.

Q. How high was the top of the deck-load above the rail? A. Nine feet.

Q. So the top of the deck-load, after you put her on the starboard tack and after it shifted at that time, was four inches more *ouboard* that it was when the vessel was loaded? A. That is right.

Q. What permitted it to shift these four inches, the top of it, the lashings?

A. Well, I suppose it would be the lashings.

Q. What kind of lashings did you have on?

A. Chain lashings.

Q. How many of them?

A. Twelve, I think, on each side.

Q. You were not able to say whether or not the lumber underneath the rail had shifted at all, were you? A. No, I was not able to say that.

Q. Now, you testified this morning that early in the morning of the 8th of October, you got your steam-pump to working? [285] A. Yes, sir.

(Testimony of Capt. A. W. Swenson.)

Q. And you started to take the water out of her?

A. Yes, sir.

Q. And then, before you got the water out of her, you were struck with this heavy northwesterly gale?

A. Yes.

Q. And this heavy northwesterly gale did what to her?

A. Threw her on her beam ends and shifted the deck-load more than before.

Q. As soon as she shifted the deck-load more you got ready to jettison? A. Not immediately, no.

Q. Well, how soon after that did you get ready to jettison? A. The following morning, the 9th.

Q. Were you able to use your pump after she shifted the deck-load following the northwest gale?

A. Only for a little while, but not very long.

Q. What did you do in preparation for the jettisoning of the deck-load?

A. Well, I had a big spar on the starboard side 82 feet long. I had to cut that in pieces in order to get that so I could shift it on to the port side. It was while I was sawing this spar to pieces that she listed, filled more and more and listed so heavily that all the deck lashings snapped.

Q. Did you take up the strain on any of your lashings in preparation to let others of them go?

A. No, I had not come to that.

Q. You had not come to that yet. Now, when your deck-load went, it carried with it the spars?

[286] A. Yes.

Q. Where did they break off?

(Testimony of Capt. A. W. Swenson.)

A. They seemed to break off in two places, even with the deck-load, and they broke off apparently just about even with the rail and then down level with the deck.

Q. Did they break in two places at the same time?

A. Must have done so.

Q. Did you notice at that time?

A. No, I did not know before we commenced to examine down below, after the deck-load was all off.

Q. After you were back in port?

A. After we got in port.

Q. So that as you say the masts go by the board at sea, they broke off about even with the top of the deck-load? A. Even with the rail.

Q. And then when she returned to port you found that they had also parted at the deck? A. Yes, sir.

Q. Now, did Captain Crow make a personal survey of the vessel before you started loading at Westport? A. He did.

Q. What did he do to make that survey?

A. Well, he came down to Astoria after I had discharged my coal and he examined her thoroughly all around.

Q. Tell me what he did?

A. He went—they usually use a pricker, something like this (indicating an ice-pick) jabbing into the seams and into the butts.

Q. What seams, the outside seams?

A. The outside seams. [287]

Q. Deck seams?

A. Deck seams, hatch coamings, the runways, and

(Testimony of Capt. A. W. Swenson.)

went down in the hold examined the soundings of her ceiling and keelsons.

Q. Did he go over that portion, did he examine thoroughly? A. Yes, sir, he did.

Q. You were with him at the time? A. I was.

Q. And you would say it was a thorough examination? A. Yes, sir.

Q. Did he find the seams in a sound and tight condition? A. He found them all sound.

Q. Outside seams and deck seams? A. Yes, sir.

Q. Inside seams? A. Yes.

Q. Did he take a boat and go in under her stern and test the seams around her stern post?

A. No, he did not do that.

Q. Did he test this steam-pump to see whether it was in working order?

A. Yes, sir, it was in working order.

Q. On the bilge?

A. Not on the bilge, but over the side.

Q. The outside suction? A. Yes, sir.

Q. Never tested it on the bilge?

A. No, Crow did not. I would like to state that there was not enough water in the vessel for the steam-pump to work while she was in port, for that reason he could not; no [288] use to try it on the bilge.

Q. You did not work it in the bilge on the way across, did you?

A. Oh, yes, I tried her and he tried her lots of times, but there was not at any time sufficient water to use the steam-pump in the bilge.

(Testimony of Capt. A. W. Swenson.)

Q. So that you could not tell anything about it?

A. I had machinists examine the pump several times.

Q. Machinists aboard the vessel?

A. Machinists yes, and found her in good condition. As long as it would pump water over the side I came to the conclusion the pump was in good order.

Q. Where did the suction lead to?

A. Down to the keelson.

Q. Where was the pump located on deck?

A. Steam-pump?

Q. Yes.

A. In the forepart of the vessel underneath the fore-castle-head.

Q. Where did the suction lead to, right straight down into the bilge below, underneath the fore-castle-head?

A. No, it leads right amidships, right over the keelson.

Q. The suction-pipe of the pump, does that lead right straight down into the bilge from the pump, or does it run beneath the deck and then down?

A. It runs from the pump underneath the deck and then down at right-angles.

Q. And through the center of the keelson into the bilge? A. Yes, sir.

Q. Did you ever examine the lower end of the suction? [289]

A. No, I had no way of doing so, except by taking the pipe out.

Q. Could not you reach the end of the suction by

(Testimony of Capt. A. W. Swenson.)

taking out a piece of her ceiling?

A. Yes, I suppose they could, but it is an expensive piece of work.

Q. That would require the taking out of what sized piece of the ceiling planks?

A. Five inches thick.

Q. That would mean the taking out of one plank five inches thick? A. Yes, sir.

Q. And putting it back in place? A. Yes, sir.

Q. All it would mean would be the taking out of that plank?

A. No, it would mean the docking of the vessel, and that plank would have to be refastened from the outside, the trunnels.

Q. In order to examine the bottom of this suction-pipe was your vessel so constructed that you would have to put her on a dry-dock and take the outside planking off her?

A. Not the outside plank, but the inside ceiling is so fastened. It is not fastened with spikes, it is fastened with trunnels on the outside.

Q. Then this vessel was equipped in such a way that it was impossible for you to examine the lower end of your big suction-pipe without docking the vessel?

A. Well, practically that, but that pipe could be unscrewed and taken out.

Q. You did not examine that by unscrewing it to see the [290] condition of the lower end of the suction?

A. I did not, because it had been in order most of

(Testimony of Capt. A. W. Swenson.)

the time. There was no occasion for me to do it.

Q. You say on the voyage coming from Australia that you did not have enough water in the vessel to necessitate its use?

A. That is true. I am just trying to recollect when I did use it. I had enough water in her once in Callao, where I used it.

Q. How many voyages previous?

A. The voyage previous to this.

Q. Where did you go from Callao?

A. To Astoria.

Q. Loaded lumber from there?

A. To Australia.

Q. And went back to Astoria? The voyage outward and back to Astoria? A. Yes, sir.

Q. The last time you had occasion to use the pump, tried it so as to ascertain whether the suction was in working order was at Callao?

A. Yes, sir, and it was in good condition at that time.

Mr. CAMPBELL.—I would like to offer in evidence the report of the loss, to which he has been referring during this morning. If you desire the original copy back the commissioner can make a copy of it and return the original.

Mr. CLISE.—I have no objection with that understanding.

Paper marked Defendant's Exhibit 14, filed and returned herewith.

Q. Do you remember how many feet of lumber you had on deck? [291]

(Testimony of Capt. A. W. Swenson.)

A. I do not. The report will show, the final survey.

Q. 667,991 feet in the hold and 588,424 on deck?

A. Probably that is right.

Q. Was that freshly sawed lumber?

A. Yes, sir.

Q. You loaded it right from the saw?

A. Yes, sir.

Q. Have you any record of her draft at that time?

A. When she was loaded?

Q. Yes. A. The record is right there.

Q. Have you any personal record? A. No.

Q. How much would she lose by going from fresh water into salt?

A. Well, I allow about four inches on the "Nottingham."

Q. Do you remember what quantity of lumber you had on deck on your last voyage out?

A. About the same amount, I think.

Q. Where did you load that? A. At Astoria.

Q. At the Hammond mill? A. Yes, sir.

Q. Was that freshly sawed lumber?

A. Yes, sir, it is, most of the time it is fresh.

Q. Practically all the time you load freshly sawed lumber? A. Yes, sir.

Q. Do you remember what your drafts were on this last voyage?

A. Well, practically the same draft.

Q. You have not the figures with you? [292]

A. No, I have not. Of course, the log-book was lost.

(Testimony of Capt. A. W. Swenson.)

Q. You say you received this telegram on December 21, 1911:

“Seattle, Wn., Dec. 21, 1911.

Captain A. W. Swenson, Schr. ‘Wm. Nottingham,’
Care Brown and McCabe, Portland, Or.

Walker disagrees with Captain Crowe views about leak, he Thinks top sides responsible. Wants you to make thorough examination of stop sides look especially for rooms make no mention of what you learn over there. Please make examination Friday. Bring equipment list with you.

GLOBE NAVIGATION CO.”

You received that telegram? A. Yes, sir.

Q. How soon was that after she had been docked?

A. She had not been docked then, had she? I have forgotten.

Q. She was docked about that time, was she not?

A. That was before she was docked—I am not sure on that point.

Q. Now, what did you say this morning about the examination you made in response to this telegram?

A. I said that I examined the vessel thoroughly all over. I swung stages on both sides complete and went right around the vessel, me and my mate, and examined the seams the whole top side, the butts and the seams; especially so around the stern post.

Q. And at the stern post you found this open seam?

A. Yes, I found that open seam, about six inches long, I think.

Q. That was the only seam that you found that

(Testimony of Capt. A. W. Swenson.)

was in a leaky condition? A. Yes, sir, practically.

Q. A few butt ends along the side?

A. There were a few soft spots but nothing that I thought—

Q. Was serious? [293] A. No.

Q. Where were these soft spots, along the channel plates?

A. No, not along the channel plates. Most of these were under the counter, those on the aft part of the vessel where, you know, it flanges out.

Q. Looking at exhibit 9, were these places above where you see the ruler? A. No.

Q. Can you show by reference to exhibit 3?

A. Yes, they were under here, along about the turn of the bilge.

Q. That is on the turn of the bilge just abaft the spanker chain-plates, which are marked 2, C, M, on photograph 3? A. Yes.

Q. Was she at that time about as you see her in this photograph? A. Just about.

Q. How did you get underneath her stern so as to examine the seams around the stern post?

A. Well, I slung staging there.

Q. Could you not reach it with a boat?

A. Too high up for a boat.

Q. Her lumber was off her at that time?

A. Yes, sir.

Q. She was then high out of the water?

A. Yes, sir.

Q. How far was this seam near the stern post in under the extreme stern of the vessel?

(Testimony of Capt. A. W. Swenson.)

A. Well, I could not tell you; I never measured her stern.

Q. Ten or twelve feet? [294]

A. I guess it is.

Q. How did you get that staging in there so as to make a close examination?

A. That is easy enough. I had guy ropes on it.

Q. So you gave her at that time a thorough examination? A. Yes.

Q. As to all her butts and seams? A. Yes, sir.

Q. And you found this seam along the stern post as you have described it? A. I did.

Q. And the only other seams on the vessel that you found were a few soft spots in under the counter or turn of the bilge as you have pointed out on exhibit 3, the photograph? A. Yes, sir.

Q. Other than the conditions of the seams that you found in these two places, you found the others in good condition? A. Fairly good condition.

Q. In as good condition as when you went to sea?

A. Yes, practically.

Q. You could not see any difference? A. No.

Q. When that vessel was on the starboard tack, the port side of the vessel would be lower in the water than when she was on the port tack? A. Yes, sir.

Q. What do you mean by "quick work"? You referred this morning to the quick work. Is that the side of the fore-castle-head above the main deck and the side of the [295] cabin above the main deck?

A. Yes, sir, that is part of the side of the vessel

(Testimony of Capt. A. W. Swenson.)

above the main deck, protecting the cabin on the outside.

Q. After you put her on the starboard tack, you said that you found water coming into what you called the half deck space? A. Yes, sir.

Q. Just what is that space?

A. It is a space what we call the poop-deck that runs along more aft to a certain distance forward of the cabin and it drops down about three feet and then the break of the poop extends a little further and then it drops down a partition, down to the main deck. This space is called the half deck underneath that break of the poop.

Q. What do you call the top of that, you walk across that? A. That is the break of the poop.

Q. After you put her on the starboard tack you say you found that there was water coming into that half deck? A. Yes, sir.

Q. How at that time did the water get into the lower hold of the vessel, from the half-deck?

A. Well, I cannot explain that except that the pressure had been so great that it had started this part of the quick work away from the fastenings where it was fastened on the main deck.

Q. That is the only way you can explain it, that is a possible pulling of the quick work away from the covering board? A. Yes, sir.

Q. And allowing the water to get down between the outside plank and the ceiling? [296]

A. Yes, sir.